[redacted]

[redacted] Court of the United States

[redacted]

No. 372

[redacted]

MID-LAND VALLEY RAILROAD COMPANY,
PETITIONER,

vs.

THOMAS BARNSLEY ET AL.

[redacted]

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

[redacted]

[redacted]

[redacted]

(32,827)

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No.

MIDLAND VALLEY RAILROAD COMPANY,
PETITIONER,

vs.

THOMAS BARKLEY ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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[fol. 1] [Caption omitted]

Appearances of counsel omitted in printing.

[fol. 2]

IN CIRCUIT COURT OF SEBASTIAN COUNTY

No. 2520

THOMAS BARKLEY and ALTON BURNETT, Partners as Fax Coal Company, Plaintiffs,

vs.

MIDLAND VALLEY RAILROAD COMPANY

COMPLAINT—Filed September 7, 1923

The plaintiffs, Thomas Barkley and Alton Burnett, constituted a partnership under the name of Fax Coal Company, which is a company formed for the purpose of operating a coal mine in Sebastian county, Arkansas, and of mining and removing coal therefrom.

On or about April 1920, plaintiff leased from C. C. Woodson a coal mine near Excelsior in said county on defendant's line of railroad together with the mine equipment in said mine and also the railroad switch connected with said mine and with defendant's line of railroad, for a period of five years for a royalty of forty cents per ton on each ton of coal mined and removed from said mine during the period of the lease. Under said lease plaintiffs had the right to mine and remove the coal from the northwest quarter of the northeast quarter of section 8, township 5 north, range 31 west, in said county during the term of said lease. At the time of the execution of said lease the plaintiffs went into possession of said mine, mine equipment and railroad switch under the terms of said lease.

Said lease was in writing but is not in the possession of the plaintiffs or under their control and has been lost or destroyed. The plaintiffs are therefore not able to file a copy thereof with this complaint.

The defendant is an Arkansas railroad corporation with a line of railroad in Sebastian county, Arkansas, extend-
[fol. 3] ing to various towns and coal mines in said county, including said coal mine of plaintiffs and at all the times referred to in this complaint the defendant was doing the business of a comomn carrier of freight for hire and especially coal in carload lot shipments on its said line of railroad.

Plaintiffs performed a great amount of development work in said mine at heavy expense to themselves and purchased and placed therein a large quantity of machinery and equipment in order to put said mine in condition for profitable operation during the term of their lease.

In the latter part of June 1922, at a time when plaintiffs had developed said mine to the point that it could be profitably worked during the remainder of the term of plaintiffs lease, the defendant through its agent, one Tyler, demanded of plaintiffs that plaintiffs sell and turn over to the defendant the output of coal from their said mine at the price of $3.55 per ton when coal was bringing on the open market much more than that price and defendant, through its said agent Tyler, threatened plaintiffs that if plaintiffs failed to sell and deliver to the defendant the coal from their said mine at said price the defendant would fail and refuse to furnish plaintiffs with coal cars in which to ship the output of their coal mine and that thereby plaintiffs coal mine would be compelled to shut down. Plaintiffs refused to sell and deliver to the defendant their coal at the price as demanded and thereafter the defendant wrongfully failed and refused to furnish plaintiffs coal cars in which to ship the coal from their said mine although the plaintiffs duly requested the defendant so to do. This [fol. 4] wrongful failure and refusal of defendant to furnish coal cars to plaintiffs in which to ship the output of their mine when and as requested by plaintiff continued from August 1st, 1922, until January 1st, 1923, the plaintiff receiving only some 12 coal cars from defendant during said period.

The plaintiffs, on June 22, 1922, were prepared and able to mine and load and were mining and loading one car of coal per day from their said mine, the cars containing on an average forty-five tons of coal each. The plaintiffs were realizing on this coal a profit of one hundred thirty

two dollars per *ton*. But for the wrongful failure and refusal of defendant to furnish coal cars to plaintiff in which to ship the output of their mine when and as requested and demanded by plaintiffs the plaintiffs would and could have mined and shipped twenty cars of coal in each of the months of August, September, October, November and December, 1922, and could and would have realized thereon a net profit of one hundred and thirty two dollars per car or a total profit of thirteen thousand two hundred dollars, which amount less the sum of fifteen hundred eighty four dollars profit on twelve cars actually shipped was wholly lost to the plaintiffs by reason of the wrongful failure and refusal of the defendant to furnish the plaintiffs during said period coal cars when and as demanded in which to ship the output of plaintiffs' mine.

During the period from June 22nd, 1922, to January 1st, 1923, and while plaintiffs were unable to operate their said mine by reason of the wrongful failure and refusal of the defendant to furnish coal cars as aforesaid, the plain-[fol. 5] tiffs were put to large expense in caring for said mine and in keeping the water pumped therefrom.

On or about January 1st, 1923, by reason of the continued wrongful refusal of defendant to furnish plaintiffs coal cars in which to ship the output of their mine, the plaintiffs were compelled to give up said mine and the remainder of said lease term and transfer and deliver the same to other parties who were not under the ban of the defendant.

The plaintiffs expended in the development of said mine and in watching and caring for the same, including their own time and labor, the sum of fourteen thousand two hundred sixty dollars and were re-imbursed therefor only in the sum of six thousand dollars which they received from the sales of coal during said development period, leaving the sum of eight thousand two hundred and sixty dollars expenditures which became a total loss to the plaintiffs by reason of the wrongful failure and refusal of defendant to furnish coal cars to plaintiffs as aforesaid. The plaintiffs also sustained a net loss of eighteen hundred dollars on mone machinery from the same cause, making a total loss on this account of ten thousand and sixty dollars.

But for the wrongful failure and refusal of defendant to furnish coal cars as aforesaid when and as requested and

demanded by the plaintiffs the plaintiffs would not have been compelled to give up their mine and lease and plaintiffs could and would have mined, shipped and sold from their said mine from January 1st, 1923, to September 1st, 1923, a period of eight months, twenty cars of coal during each of said months, or a total of one hundred and sixty [fol. 6] cars of coal during said period, and plaintiffs could and would have realized thereon a net profit of seventy five dollars per car of a total profit of twelve thousand dollars.

The plaintiffs have sustained damages in the total sum of thirty three thousand six hundred seventy six dollars as hereinbefore set forth in detail as a proximate result of the defendant's wrongful failure and refusal to furnish plaintiffs coal cars when and as requested and demanded by them in which to ship coal from their said mine.

Wherefore the plaintiffs pray judgment against the defendant for the sum of thirty three thousand six hundred seventy-six dollars, with interest, for costs of suit and for all legal relief.

9-3-23.

U. C. May, Evans & Evans, Attorneys for Plaintiffs.

(Summons issued Sept. 7, 1923; served September 11, 1923.)

[File endorsement omitted.]

[fol. 7] In Circuit Court of Sebastian County

Demurrer—Filed November 1, 1923

Comes the defendant, Midland Valley Railroad Company, and demurs to the complaint filed against it herein, and for grounds says:

I

That the complaint does not state facts sufficient to constitute a cause of action against this defendant.

O. E. Swan, Pryor & Miles, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 8] IN CIRCUIT COURT OF SEBASTIAN COUNTY

SPECIAL DEMURRER—Filed July 8, 1924

Comes the defendant and demurs to the complaint of the plaintiff herein and for grounds therefor states:

I

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II

That said complaint does not allege facts sufficient to constitute a cause of action within the jurisdiction of this Court.

III

That the Act of Congress, known as the "Interstate Commerce Act" as amended by the Transportation Act and other acts of Congress amendatory thereof, confers exclusive authority upon the Interstate Commerce Commission in the matter of the distribution of coal cars and jurisdiction in matters of alleged failure to furnish same.

Thos. B. Pryor, Attorney for Defendant.

[File endorsement omitted.]

[fol. 9] IN CIRCUIT COURT OF SEBASTIAN COUNTY

AMENDED ANSWER—Filed July 21, 1924

Comes the defendant, Midland Valley Railroad Company, and for its answer to the complaint of the plaintiff herein, says:

Denies that on or about April 1920, plaintiffs leased from C. C. Woodson a coal mine near Excelsior in said county on defendant's line of railroad together with the mine equipment in said mine and also the railroad switch connected with said mine and with defendant's line of railroad,

for a period of five years for a royalty of forty cents per ton on each ton of coal mined and removed from said mine during the period of the lease. Denies that under said lease plaintiffs had the right to mine and remove the coal from the Northwest Quarter of the Northeast Quarter of Section 8, Township 5 North, Range 31 West, in said county during the term of said lease. Denies that at the time of the execution of said lease the plaintiffs went into possession of said mine, mine equipment and railroad switch under the terms of said lease.

Denies that said lease was in writing but is not in possession of the plaintiffs or under their control and has been lost or destroyed. Denies that the plaintiffs are therefore not able to file a copy thereof with their complaint.

Admits that the defendant is an Arkansas Railroad Corporation, but denies that its line of railroad in Sebastian County, Arkansas, extends to various towns and coal mines in said county, including said coal mine of plaintiffs, and [fol. 10] denies that at all times referred to in this complaint the defendant was doing the business of a common carrier of freight for hire and especially coal in carload lot shipments on its said line of railroad.

Denies that plaintiffs performed a great amount of development work in said mine at heavy expense to themselves and purchased and placed therein a large quantity of machinery and equipment in order to put said mine in condition for profitable operation during the term of their lease.

Denies that in the latter part of July 1922, at a time when plaintiffs had developed said mine to the point that it could be profitably worked during the remainder of the term of plaintiffs' lease, the defendant through its agent, one Tyler, demanded of plaintiffs that plaintiffs sell and turn over to the defendant the output of coal from their said mine at the price of $3.55 per ton when coal was bringing on the open market much more than that price, and denies that defendant, through its agent, Tyler, threatened plaintiffs that if plaintiffs failed to sell and deliver to the defendant the coal from their said mine at said price the defendant would fail, and refuse to furnish plaintiff with coal cars in which to ship the output of their coal mines and that thereby plaintiffs coal mine would be compelled to

shut down. Denies that plaintiffs refused to sell and deliver to the defendant their coal at the price as demanded and denies that thereafter the defendant wrongfully failed and refused to furnish plaintiffs coal cars in which to ship the coal from their said mine although the plaintiffs duly [fol. 11] requested the defendant so to do. Denies that this wrongful failure and refusal of defendant to furnish coal cars to plaintiffs in which to ship the output of their mine when and as requested by plaintiff continued from August 1st, 1922, until January 1, 1923, and denies that the plaintiffs received only some 12 coal cars from the defendant during said period.

Denies that plaintiffs, on August 1, 1923, were prepared and able to mine and load, and were loading and mining one car of coal per day from their said mine, the cars containing on an average forty-five tons of coal each. Denies that the plaintiffs were realizing on this coal a profit of one hundred and thirty two dollars per car. Denies that but for the wrongful failure and refusal of defendant to furnish coal cars to plaintiffs in which to ship the output of their mine when and as requested and demanded by plaintiffs, the plaintiffs could and would have mined and shipped twenty cars of coal in each of the months of August, September, October, November and December, 1922, and could and would have realized thereon a net profit of one hundred and thirty two dollars per car, or a total profit of thirteen thousand two hundred dollars, which amount less the sum of Fifteen hundred Eighty-four dollars profit on twelve cars actually shipped was wholly lost to the plaintiffs by reason of the wrongful failure and refusal of the defendant to furnish the plaintiffs during said period coal cars when and as demanded in which to ship the output of plaintiff's mine.

Denies that during the period from August 1st, 1922, to January 1, 1923, and while plaintiffs were unable to [fol. 12] operate their said mine by reason of the wrongful failure and refusal of the defendant to furnish coal cars as aforesaid, the plaintiffs were put to large expense in caring for said mine and in keeping the water pumped therefrom.

Denies that on or about January 1, 1923, by reason of the continued wrongful refusal of defendant to furnish plain-

tiffs coal cars in which to ship the output of their mine, the plaintiffs were compelled to give up said mine and the remainder of said lease term and transfer and deliver the same to other parties who were not under the ban of the defendant.

Denies that the plaintiffs expended in the development of said mine and in watching and caring for the same, including their own time and labor, the sum of Fourteen Thousand Two hundred and Sixty Dollars and were re-imbursed therefor only in the sum of Six Thousand Dollars, which they received from the sales of coal during said development period, leaving the sum of Eight Thousand Two Hundred Sixty Dollars expenditures which became a total loss to the plaintiffs by reason of the wrongful failure and refusal of defendant to furnish coal cars to plaintiffs as aforesaid. Denies that the plaintiffs also sustained a net loss of Eighteen Hundred Dollars on mine machinery from the same cause, making a total loss on this account of ten thousand and sixty dollars.

Denies that but for the wrongful failure and refusal of defendant to furnish coal cars as aforesaid when and as requested and demanded by the plaintiffs, the plaintiffs would not have been compelled to giv- up their mine and lease and plaintiffs could and would have mined, shipped [fol. 13] and sold from their said mine from January 1st, 1923, to September 1, 1923, a period of eight months, twenty cars of coal during each of said months, or a total of one hundred and sixty cars of coal during said period, and denies that plaintiffs could and would have realized thereon a net profit of seventy-five dollars per car, or a total of Twelve Thousand Dollars.

Denies that the plaintiffs have sustained damages in the total sum of Thirty-three Thousand Six Hundred Seventy Six dollars as hereinbefore set forth in detail as a proximate result of the defendants wrongful failure and refusal to furnish plaintiffs coal cars when and as requested and demanded by them in which to ship coal from their said mine.

Defendant denies that plaintiffs are entitled to judgment against the defendant for the sum of Thirty-three Thousand Six Hundred Seventy-six Dollars, with interest, or for any other sum.

Defendant, further answering states:

That under the Act of Congress known as "The Transportation Act," approved February 28, 1920, jurisdiction in all matters involving the furnishing of or distribution of coal cars was by said Act vested in the Interstate Commerce Commission. Section 12 of said Act provides:

"(12). It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the car- [fol. 14] rier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States.

(13) The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this Act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules shaowing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this Act relating thereto.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations or practices.

(15) Whenever the Commission is of opinion that [fol. 15] shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have and it is hereby given, authority, either upon complaint or upon its own init-ative without complaint, at once, if it so orders, without answer or formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) to suspend the operation or any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequrnt hearing find to be just and reasonable."

This defendant has in all things complied with the rules and regulations prescribed by the Interstate Commerce Commission in the matter of furnishing and distributing its available coal car supply.

That after the passage of the Transportation Act, Congress again legislated upon the subject of the distribution of cars and the transportation of coal, and in the Act approved September 22, 1922, in Section- 2, 3 and 4 thereof [fol. 16] provides as follows:

"Sec. 2. That the powers of the Interstate Commerce Commission under the Act entitled 'An Act to regulate Commerce,' approved February 4, 1887, as amended, including the Transportation Act, 1920, and especially under Section 402 of said Transportation Act, 1920, are, during the aforesaid emergency, enlarged to include the authority to issue in transportation of coal or other fuel orders for priorities in car service, embargoes, and other suitable measures in favor of or against any carrier, including vessels suitable for transportation of coal on the inland waters

of the United States which for such purpose shall be subject to the Interstate Commerce Act, or region, municipality, community, or person, copartnership, or corporation, and to take any other necessary and appropriate steps for the priority in transportation and for the equitable distribution of coal or other fuel so as best to meet the emergency and to promote the general welfare, and to prevent upon the part of any person, partnership, association or corporation the purchase or sale of coal or other fuel at prices unjustly or unreasonably high. This Act shall not be construed as repealing any of the powers heretofore granted by law to the Interstate Commerce Commission, but shall be construed as conferring supplementary and additional powers to said commission and as an amendment to Section 1 of the Interstate Commerce Act, and subject to the limitations and definitions of commerce controlled by said Act, and all powers given said Interstate Commerce Commission shall be applicable in the execution of this Act.

[fol. 17] Sec. 3. Because of such emergency and to assure an adequate supply and an equitable distribution of coal and other fuel, and to facilitate the movement thereof between the several States and with foreign countries, to supply the Army and Navy, the Government of the United States and its several departments, and carriers engaged in interstate commerce with the same during such emergency, and for other purposes, and for the further purpose of assisting in carrying into effect the orders of the Interstate Commerce Commission made under existing law or under Section 2 hereof, there is hereby created and established an agency of the United States to be known as Federal Fuel Distributor, whose appointment shall be made and compensation fixed by the President of the United States. Said distributor shall perform his duties under the direction of the President.

Sec. 4. It shall be the duty of the Federal Fuel Distributor to ascertain—

(a). Whether there exists in the United States or any part thereof a shortage of coal or other fuel and the extent of such shortage;

(b). The fields of production of coal and other fuel and the principal markets to which such production is or may be transported and distributed and the means and methods of distribution;

(c). The prices normally and usually charged for such coal and other fuel and whether current prices, considering the costs of production and distribution are just and reasonable; and

[fol. 18] (d). The nature and location of the consumers; what persons, corporations, copartnerships, regions, municipalities, or communities should, under the acts to regulate commerce administered by the Interstate Commerce Commission, including the Transportation Act 1920, in time of shortage of coal and other fuel, or the transportation thereof, receive priority in transportation and distribution, and the degree thereof, and any other facts relating to the production, transportation, and distribution of coal and other fuel; and when so ascertained the Federal Fuel Distributor shall make appropriate recommendations pertaining thereto to the Interstate Commerce Commission from time to time either on his own motion or upon the request of the commission, to the end that an equitable distribution of the coal and other fuel may be secured so as best to meet the emergency and promote the general welfare. All facts and data within the possession of the Federal Fuel Distributor shall be at all times accessible and furnished to the Interstate Commerce Commission upon its request. The Interstate Commerce Commission is hereby authorized and directed to receive and consider the recommendation of the Federal Fuel Distributor, based upon his reports upon the foregoing subjects, and any other information which it may secure in any manner authorized by law."

That under the said Acts of Congress this Court has no jurisdiction of the subject-matter of the action involved in this suit; that this defendant pleads said acts of Congress as a defense to the allegations contained in the complaint of the plaintiffs herein.

[fol. 19] That the plaintiff did not make a demand for the cars in the way and manner provided either by the rules of

the Interstate Commerce Commission or the Act of Congress, or according to Section 895 of Crawford & Moses' Digest of the Statutes of Arkansas, which provides that a written application shall be filed with the station agent of a railroad company for cars.

Defendant further answering says:

That under the orders of the Interstate Commerce Commission, the rules and regulations adopted by the United States Railroad Administration dated Washington, Dec. 23, 1919, were in effect during the period alleged in the complaint herein, a copy of said orders being attached hereto marked Exhibit "A" and made a part hereof; that the plaintiffs' mine was what is termed a "wagon-load mine," in that the coal produced at the mine was hauled in a wagon to the spur or switch track upon which it was loaded into the cars, and therefore was not rated as only the mines, under the rule of the Interstate Commerce Commission were rated that were loaded from a tipple. That the ratings of said mines based upon the rules and regulations and orders of the Interstate Commerce Commission on the Midland Valley Railroad during the period alleged in the complaint of the plaintiffs are showing by Coal Rating Bulletin No. 5, issued by the defendant herein under date of July 1, 1922, a copy of which is hereto attached, marked Exhibit "B," and made a part hereof, and also Bulletin No. 6, a copy of which is hereto attached and marked Exhibit "C," and made a part hereto, and Bulletin No. 7, dated November 7, 1922, a copy of which is hereto attached, marked exhibit [fol. 20] "D," and made a part hereof, and Bulletin No. 8, dated January 8, 1922, a copy of which is attached hereto marked Exhibit "E," and made a part hereof. That all of said bulletins were issued under the authority of the rules, regulations and orders of the Interstate Commerce Commission.

That regardless of the fact that the mine of the plaintiffs was a "wagon-load" mine, and without a rating, this defendant did furnish to the plaintiff cars in which to load its coal, but acting under the orders of the Interstate Commerce Commission, when unable to obtain a sufficient supply of open cars, or regular coal cars, to furnish to the plain-

tiffs, then the defendant furnished to the plaintiffs, and also to other "wagon-load" mines, box cars in which to load coal, and which were used by said mines.

That finally the plaintiff refused to use box cars in which to load coal for its mine; that as hereinbefore alleged, the distribution of coal cars on the railroad of the defendant, and the ratings of the mines which showed the production of said mines, and the number of cars which it was entitled to receive, on a pro rata basis, was all governed by the rules, regulations and orders of the Interstate Commerce Commission.

Having fully answered, defendant asks that it be hence discharged.

O. E. Swan, Thos. B. Pryor, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 21] EXHIBIT "A" TO AMENDED ANSWER

United States Railroad Administration, Director General of Railroads, Division of Operation, Car Service Section

Circular CS-31 (Revised)

Washington, December 23, 1919.

To Railroads:

The following rules are promulgated to govern uniformly the rating of coal mines (other than anthracite) and car distribution to such mines. They will supersede the rules contained in Car Service Section Circular CS-31, and are to be made effective on all railroads loading coal (other than anthracite) in season to permit car distribution to be made in accordance therewith, beginning January 10, 1920.

Rules for Rating for Car-distribution Purposes, Coal Mines (Other than Anthracite) Loading Coal at Mine Tipples

The following rules shall govern the rating of coal mines (other than anthracite) as the basis for the distribution of empty cars to such mines:

(a). The daily capacity of each mine (other than mines covered by paragraphs b and c) shall be determined by taking the total coal tonnage shipped by the mine during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which the cars shall be distributed to it.

[fol. 22] (b). The daily capacity of a mine which is served jointly by or for two or more carriers (steam, electric, or water) shall be determined by taking the total tonnage shipped by the mine via all such carriers during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "gross daily rating" of such mine and shall be the basis on which cars shall be distributed to it; provided, that if track or other limiting conditions further restrict its ability to ship via (note a) —— railroad, such condition shall be the limiting factor for the (note a) —— railroad's daily rating of such mine.

(c). The daily capacity of a mine delivering a part of its output to a coking plant, to locomotives at the tipple, or to local trade shall be determined by taking the total coal tonnage shipped in railroad cars during the preceding month, dividing it by the number of hours worked (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(d). When the fires are withdrawn from part (or all) of the ovens at an operation coking part of its output, for the purpose of shipping coal production formerly used in charging ovens, the daily rating of the mine shall be in-
[fol. 23] creased to include the average tonnage per day so diverted in the previous month until the beginning of the next rating period, at which time the daily rating of the mine shall be determined in accordance with paragraph

a or e, due allowance being made for such average tonnage so diverted in computing the new daily rating. A corresponding decrease of the mine's rating will be made when the ovens are again placed in blast.

When a mine that has been coking its entire output desires to ship coal and the fires are withdrawn from part (or all) of its ovens, it shall be given a daily rating for coal shipments according to the average tonnage of coal formerly coked until the beginning of the next rating period, at which time the daily rating of the mines shall be determined in accordance with paragraphs a or e.

(e). In determining the number of hours worked in each day at a mine, time will be counted from the established time for beginning work (or the actual time if earlier or later than the established time) on the tipple until the dumping of coal finally ceases for the day, making deductions for the noon intermission when it is taken and for the time lost by reason of being blocked with loads, waiting for additional empty cars, or other railroad disability; provided, that if a greater number of hours is worked in the mine than on the tipple, the mine hours must be reported also, and the number of hours worked in the mine must then be used as the number of hours worked in producing the coal. (See paragraphs a, b, and c.) Time may be deducted for railroad disability only when such railroad disability actually reduces the quantity of coal [fol. 24] dumped that day. Time may be deducted when tipple is used for dumping coal into locomotives only when the tipple cannot be simultaneously operated for loading cars.

(f). Daily ratings determined in accordance herewith will be revised monthly and made effective on the 10th of the month following the month's performance on which the rating is determined.

(g). If a mine be idle for a period of one full calendar month or more, the last rating determined will be the rating when work is resumed, provided the mine conditions be substantially the same as when the mine closed.

(h). Rating for development purposes based on current performance will be assigned to a new operation in previously undeveloped coal. A new mine will be furnished

with a supply of cars sufficient to enable it to work freely in the course of development for a period not exceeding 6 months after shipment- are begun; provided, that if theretofore its ability to load 150 tons per shift (not, however, to exceed 2 shifts per day) is established, it shall then be rated. A new operation of any other character shall be entitled to a development rating for a period of one month after shipments are begun.

(i). Each mine shall report on a prescribed form to the —— (note b) —— promptly at the close of each day:

1. The number of hours in the recognized work day.
2. The established time for beginning the day's work.
3. Actual time work was begun this day on the tipple.

[fol. 25] 4. If the noon hour intermission is taken, how long.

5. Time lost during the day account.

Waiting for railroad cars or other railroad disability ..... — Hours
Strikes or mine labor shortage ..... — Hours
Mine disability ..... — Hours
No market ..... — Hours
All other causes ..... — Hours

6. Time work on tipple ceased for day.
7. Number of hours worked to day on the tipple * * * and in the mine ——. (See paragraph e.)
8. Number of net tons of coal loaded for shipment via —— (note a) —— railroad.
9. Total number of net tons of coal produced and shipped via each other outlet.

Joint mines shall furnish this daily report to each carrier serving them.

If after notice from the railroad an operator persistently fails to furnish this daily report, he will be penalized by curtailment of his car supply to the amount of 25 per cent of distribution for one week.

(j) At the close of each month the mine manager or superintendent in charge of actual operation shall report under oath on a prescribed form the —— (note b) ——

having jurisdiction, separately for each mine for each month, as follows:

1. Number of hours in the recognized work day.
2. Total number of net tons of coal produced.
3. Total number of net tons of coal shipped via the * * * (note a) —— railroad.
4. Total number of net tons of coal shipped via each outlet.
5. Total number of hours worked during the month. (See paragraph e.)

This report must be forwarded not later than the 3rd of the month following that for which the statement is furnished; provided, that where the location of the mine makes [fol. 26] it inconvenient to furnish a report under oath by that date, a report not under oath may be forwarded, and the sworn report forwarded not later than one week after. Joint mines shall furnish this monthly report to each carrier serving them.

(k). If an operator declines or persistently fails to make reports or to make accurate reports to the carrier as required herein, it will be assumed that the mine worked full hours in producing and loading into railroad cars the tonnage shipped, and the daily rating will be computed accordingly.

(l). A statement showing the mine ratings which will govern the car distribution for the succeeding month will be furnished as soon as such ratings are ascertained to such coal mines on this railroad as make application for the same. Such statement will show the mine rating of each mine and the mine rating of each coal loading district and the aggregate ratings for all mines and all districts on this railroad, and the percentage of each such figure to the total.

Note a.—Designate the name of issuing railroad.

Note b.—Designate title of proper officer of issing railroad.

Rules Governing the Distribution of Cars to Coal Mine Tipples (Other than Anthracite)

Whenever the available car supply in any region (or district) is such that all orders for cars can be filled, cars

shall be placed at each min- in accordance with its daily order, except that whenever a mine holds unbilled coal loads, it shall be entitled only to empty cars equal in num- [fol. 27] ber to the difference between the rating last established for the mine and the number of unbilled coal loads so held. Whenever the available car supply is such that all orders for cars can not be filled, each mine shall be given its pro rata share of cars in accordance with the following rules:

1. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

2. Grouping of mines, or pooling of cars as between mines, will not be permitted.

3. On application of mine operators and in the discretion of the railroad, cars may be placed on such days only and at such mines only as may elect to work, and overs and shortages in car supply resulting from this distribution shall be adjusted on succeeding days.

4. Each mine operator shall report to the car distributor at —— (Note 1) — p. m. daily—

(a). Number of unconsigned loads on hand at 7 a. m.

(b). Number of empty and partly loaded cars on hand at 7 a. m.

(c). Additional number of empty cars received during the day.

(d). Aggregate number of empty cars received during the day.

(e). Number of cars loaded during the day.

(f). Number of empty cars standing over at close of day.

(g). Number of empty cars standing over at close of day which were received prior to 7 a. m. — cars; and prior to 10 a. m. — cars.

(h). Number of partly loaded cars under tipple at close of day.

(i). Number of unconsigned loads on hand at close of day.

(j). Additional number of empty cars required for loading following day.

(k). Note 2.

Copies of orders for cars for a mine that is joint with [fol. 28] any other carrier (steam, electric, or water) shall be filed with a designated representative of each such carrier. Such combined requisitions must not exceed the gross daily rating of the mine.

5. The recognized standard car for coal car distribution is 50 tons. Others are compared thereto by tenths of a car; i. e., 80,000 pounds capacity equal eight-tenths (.8) of a car; 140,000 pounds capacity one and four-tenths (1.4) cars, etc., and cars must be charged and car distribution records maintained accordingly.

6. (a). All cars placed at a mine during each period of 24 hours ending at 10 o'clock, a. m. (or when Sundays or holidays intervene, the longer period ending at 10 o'clock a. m. of the day immediately succeeding the Sunday or holiday) shall be charged against the mine on the day when such period ends; provided, that if the cars placed at 7 o'clock a. m. (not including partly loaded cars) do not equal or exceed in number 25 per cent of the daily rating (or order if less than the rating) then no cars will be charged against the mine that day except such as are loaded on that day.

(b). Cars placed between 10 o'clock a. m. and the time the mine ceases work for the day, if loaded or partly loaded on the day placed, will be charged against the mine on that day.

(c). All cars of other than railroad ownership (commonly called "private cars") placed for owners loading will be considered as ordered.

7. The prorata share of cars which each mine is entitled [fol. 29] to, except as provided in rule 9, shall be based on its rating (or order when less than its rating). When a mine has empty or partly loaded cars which were placed prior to 7 a. m., or unconsigned loads standing over at the close of the day's business, such cars shall be charged against it each service day thereafter while they are detained, except as otherwise provided in rule 6.

If on any day a mine be furnished with cars totaling less than 100 per cent of its rating (or order if less than its rating) and for any cause whatever other than railroad re-

sponsibility fails to load the entire number, the mine shall be considered as having been furnished 100 per cent of its requirements, and its order shall be arbitrarily reduced to the number of cars furnished.

8. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

9. If the number of assigned cars place- at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

10. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro-rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make [fol. 30] up its pro rata share.

11. If a mine receives more or less cars than it is entitled to during any period, as provided in rule 6 (and after eliminating assigned cars as provided in rule 9), it will be charged with a surplus or credited with a shortage accordingly, and the discrepancy adjusted as promptly as practicable.

12. A statement showing the car distribution for the preceding month will be furnished as soon as such distribution is ascertained, to such coal mines on this railroad as make application for the same. Such statement will show the car distribution of each mine, the total car distribution of each coal loading district, the aggregate distribution for all mines and all districts on this railroad, and the percentage of each such figure to the total.

NOTE 1—Hour may be named by the issuing railroad.

NOTE 2—Issuing railroad may ask additional necessary information pertaining to car supply.

W. C. Kendall, Manager, Car Service Section.

Approved: W. T. Tyler, Director Division of Operation.

[fol. 31] EXHIBIT "B" TO AMENDED ANSWER

Midland Valley Railroad Company Coal Rating Bulletin No. 5

Muskogee, Oklahoma, July 1, 1922.

Agents, all concerned:

Effective July 1, 1922, the following will be the rating of various mines, based on last month's operations:

Billing station	Mine name or number	Firm operating	Location	Tons prod.	Hrs. wkd.	Rating		Hrs. lost	
						Tons	Cars	Cars	Others
Hartford	Shaft #2	H. V. C. Co.	A-18	....	...	...	4	...	208
	Rush	R. C. Co.	A-19	....	...	...	1	...	208
	Dallas	E. C. Co.	A-13	....	...	...	6	...	208
	Ellard	"	A-13	....	...	...	2	...	208
	Davis	"	A-13	....	...	...	1	...	208
	Central #11	C. C. & Co.	A-11	....	...	...	17	...	208
	Smedley	R. C. Co.	A-11	....	...	...	6	...	208
	M. & R	J. F. C. Co.	A-11	....	...	...	2	...	208
	Midland #6	K. C. Co.	A- 8	....	...	...	3	...	208
Midland	Majestic	M. C. Co.	A- 7	....	...	...	5	...	208
	Jackson	S. W. C. Co.	A- 4	....	...	...	1	...	208
Excelsior	Jones	McA. F. Co.	A- 2	....	...	...	3	...	208
	Arondelli	N. H. C. Co.	A- 1	....	...	...	2	...	208
	Elder	H. & C. Co.	3	100	16	100	2	...	192
	Porter	E. C. Co.	2	....	...	...	2	...	208
	Sunshine	S. C. Co.	1	....	...	...	1	...	208
Greenwood	Gunther #2	G. S. C. Co.	B- 6	....	...	...	12	...	208
	Fidelity	A. S. C. Co.	B- 7	....	...	...	6	...	208
Panama	Cameron #2	C. C. Co.	15	....	...	...	4	...	208
	Superior	S. S. & M. Co.	17	....	...	...	15	...	208
	Bedwell #1	B. C. Co.	23	300	48	50	1	...	160
	Bedwell #2	"	24	....	...	...	2	...	208

Bokoshe	Bokoshe #7	B. S. C. Co	30	....	...	...	6	...	208
	Bokoshe #8	"	30	....	...	...	3	...	208
Kanima	Apex	A. C. Co	48	500	56	100	2	...	152
Stigler	Acme	M. A. Co	53	5,350	192	250	5	...	16

NOTE.—For the reasons that the mines on this line have not worked since April 1st, it is thought improper to continue this coal bulletin until after the mines have begun operation.

A. N. Williams, Assistant General Manager.

Cy-Hartford Valley Coal Co., Hartford, Ark.
Rush Coal Co., Hartford, Ark.
Enterprise Coal Co., Hartford, Ark.
Central Coal & Coke Co., Hartford, Ark.
Jim Fort Coal Co., Hartford, Ark.
Majestic Coal Co., Midland, Ark.
Southwestern Coal Co., Midland, Ark.
Greenwood Smokeless Coal Co., Greenwood, Ark.
Davis Coal Co., Hackett, Ark.

Apex Coal Co., Ft. Smith, Ark.
E. D. Bedwell Coal Co., Ft. Smith, Ark.
Acme Coal Co., Stigler, Okla.
American Smokeless Coal Co., Muskogee, Oklahoma.
Superior Coal & Mining Co., Panama, Okla.
McAlester Fuel Co., McAlester, Okla.

[fol. 32]

EXHIBIT "C" TO AMENDED ANSWER

Midland Valley Railroad Company Coal Rating Bulletin No. 6

Muskogee, Oklahoma, October 1, 1922.

Agents, all concerned:

Effective October 1, 1922, the following will be the rating of various mines, based on last month's operations.

Billing station	Mine name or number	Firm operating	Location	Tons prod.	Hrs. wkd.	Rating		Hrs. lost	
						Tons	Cars	Cars	Others
Hartford	H. V. C. Co	H. V. Co	A-18	2,500	86	300	6	110	12
	Rush	R. C. Co	A-19	300	64	50	1	96	48
	Dallas	E. C. Co	A-12	850	85	100	2	67	56

EXHIBIT "C" TO AMENDED ANSWER—Continued

Billing station	Mine name or number	Firm operating	Location	Tons prod.	Hrs. wkd.	Rating		Hrs. lost	
						Tons	Cars	Cars	Others
	Ellard	E. C. Co.	A-13	1,350	66	200	4	80	62
	Davis	" "	A-13	600	82	50	1	110	16
	Smedley	R. C. Co.	A-11	1,800	47	300	6	97	64
	M. & R.	J. F. Co.	A-11	1,250	86	150	3	95	27
Midland	Majestic	M. C. Co.	A- 7	2,200	76	300	6	108	24
Excelsior	Jones	M. C. F. Co.	A- 2	400	77	50	1	83	48
	Arondelli	G. C. Co.	A- 1	350	55	50	1	97	56
Greenwood	Gunther #2	G. S. Co.	B- 6	7,350	84	750	15	116	8
	Fidelity	A. S. C. Co.	B- 7	3,000	70	350	7	86	52
Hackett	Porter	E. C. Co.	2	300	40	100	2	48	120
Panama	Cameron	C. C. Co.	15	1,800	58	300	6	70	80
	Superior	S. S. & M. Co.	17	1,700	32	450	9	64	112
	Bedwell #1	B. S. C. Co.	23	500	94	50	1	114	...
	Bedwell #2	" "	24	550	45	100	2	75	88

A. N. Williams, Assistant General Manager.

Cy-Hartford Valley Coal Co., Hartford, Ark.
Rush Coal Company, Hartford, Ark.
Enterprise Coal Company, Hartford, Ark.
Jim Fork Coal Company, Hartford, Ark.
Majestice Coal Company, Midland, Ark.
Greenwood Smokeless Coal Co., Greenwood, Ark.
E. D. Bedwell Coal Company, Ft. Smith, Ark.
Superior Coal & Mining Co., Panama, Okla.
McAlester Fuel Company, McAlester, Okla.
Central Coal & Coke Company, Hartford, Ark.
Cameron Coal Company, Kansas City, Mo.

[fol. 33] EXHIBIT "D" TO AMENDED ANSWER

Midland Valley Railroad Company Coal Rating Bulletin No. 7

Muskogee, Okla., November 7, 1922.

Agents, all concerned:

Effective November 1, 1922, the following will be the rating of various mines, based on last month's operations.

Billing station	Mine name or number	Operating firm	Location	Tons prod.	Hrs. wkd.	Rating		Hours lost	
						Tons	Cars	Cars	Others
Hartford	Hart. Valley	H. V. Co.	A-18	3,800	106	350	7	98	4
"	Rush	R. C. Co.	A-19	100	56	50	1	24	120
"	Dallas	E. C. Co.	A-13	650	54	100	2	74	80
"	Ellard	"	A-13	1,150	51	200	4	93	64
"	Davis	"	A-13	300	43	50	1	61	104
"	Smedley	R. C. Co.	A-11	2,250	58	350	7	94	56
"	Martin & R.	J. F. C. Co.	A-11	1,950	92	200	4	92	24
Midland	Majestic	N. C. Co.	A- 7	3,700	115	300	6	77	16
Excelsior	Jones	M. F. Co.	A- 2	2,000	193	100	2	7	8
"	Arondelli	G. C. Co.	A- 1	1,500	144	100	2	64	8
"	Elder	D. S. C. Co.	3	150	31	50	1	33	144
Greenwood	Gunther	G. S. C. Co.	B- 6	12,800	129	1,000	20	71	8
"	Fidelity	A. S. C. Co.	B- 7	6,000	123	450	9	85	6
Hackett	Porter	E. S. C. Co.	2	800	119	50	1	65	24
Panama	Cameron	C. C. Co.	15	5,250	107	450	9	95	6
"	Superior	S. S. C. Co.	17	5,900	79	700	14	105	24
"	Bedwell #1	B. S. C. Co.	23	700	77	100	2	70	61
"	" #2	"	24	1,750	110	150	3	75	23
Bokoshe	Bokoshe #3	M. F. Co.	30	800	104	100	2	24	80
"	" #8	"	30	1,050	88	150	3	16	104

A. N. Williams, General Manager.

Cy-Hartford Valley Coal Co., Hartford, Ark.
Rush Coal Company, Hartford, Ark.
Enterprise Coal Company, Hartford, Ark.
Jim Fork Coal Company, Hartford, Ark.
Majestic Coal Company, Midland, Ark.
Greenwood Smokeless C. Co., Greenwood, Ark.
E. D. Bedwell Coal Co., Ft. Smith, Ark.
Superior Coal & M. Co., Tahona, Okla.
McAlester Fuel Co., McAlester, Okla.
Excelsior Smokeless Coal Co., Hackett, Ark.
Gower Coal Co., Greenwood, Ark.

[fol. 34] EXHIBIT "E" TO AMENDED ANSWER

Midland Valley Railroad Company Coal Rating Bulletin No. 8

Muskogee, Oklahoma, January 8, 1923.

Agents, all concerned:

Effective January 1, 1923, the following will be the rating of various mines, based on last month's operations.

Billing station	Mine name or number	Operating firm	Location	Tons prod.	Hrs. wkd.	Rating		Hours lost	
						Tons	Cars	Cars	Others
Hartford	Hart. Valley	H. V. Co.	A-18	3,850	112	300	6	80	8
"	Rush	R. C. Co.	A-19	350	80	50	1	56	64
"	Dallas	E. C. Co.	A-13	850	34	200	4	70	96
"	Ellard	"	A-13	500	33	150	3	55	112
"	Davis	"	A-13	150	40	50	1	56	104
"	Smedley	R. C. Co.	A-11	2,250	74	300	6	70	56
"	Martin & R.	J. F. C. Co.	A-11	1,250	64	150	3	62	74
Midland	Majestic	M. C. Co.	A- 7	2,800	63	350	7	73	64
Excelsior	Jones	M. F. Co.	A- 2	3,250	176	150	3	..	24
"	Arondelli	G. C. Co.	A- 1	2,050	200	100	2	..	...
"	Elder	B. S. Co.	3	650	104	50	1	64	32
"	Porter	E. S. Co.	2	700	105	50	1	47	48
"	Sunshine	S. W. Co.	1	250	32	100	2	..	24
Greenwood	Gunther	G. S. Co.	B- 6	6,850	67	850	17	65	68
"	Fidelity	A. S. Co.	B- 7	3,100	64	400	8	56	80
Panama	Cameron	C. C. Co.	15	3,450	77	400	8	58	65
"	Superior	S. S. C. Co.	17	8,800	100	700	14	65	35
"	Bedwell #1	B. S. Co.	23	1,050	112	100	2	64	24
"	" #2	"	24	400	35	100	2	9	156
"	Hanraty	H. S. Co.	23	400	64	50	1	56	80

Bokoshe.....	Bokoshe #3.....	B. S. Co.....	30	150	40	50	1	56	104
"	" #8.....	"	30	2,250	124	150	3	28	48

A. N. Williams, General Manager.

cc-Hartford Valley Coal Co., Hartford, Ark.
Rush Coal Co., Hartford, Ark.
Enterprise Coal Co., Hartford, Ark.
Jim Fork Coal Co., Hartford, Ark.
Majestic Coal Co., Midland, Ark.
Greenwood Smokeless Coal Co., Greenwood, Ark.
E. D. Bedwell Coal Co., Ft. Smith, Ark.
Superior Smokeless Coal Co., Tahona, Okla.
McAlester Fuel Co., McAlester, Okla.
Excelsior Smokeless Coal Co., Hackett, Ark.
Gower Coal Co., Greenwood, Ark.
Southwestern Coal Co., Hackett, Ark.

Mr. John A. Sargent, Keith & Perry Bldg., Kansas City, Mo.

by Pa. L. Smith, D. C.

Amended Answer. Filed Jul. 21, 1924. S. A. Lynch, Clerk, by Pat L. Smith, D. C.

[fol. 35] In Circuit Court of Sebastian County

Amendment to Answer—Filed January 28, 1925

Comes the defendant and for its amendment to the amended answer filed herein states:

I

That at the time, beginning August 1st, 1922, to Jan. 1, 1923, alleged in the complaint herein, that there was an unusual, unprecedented and unfor-seen demand for cars on the line of this defendant's railroad in which to ship coal, and this defendant was unable to supply the demand that was made for cars; that the destination of all the coal shipped over this defendant's line of road was out of the State to points on the lines of other connecting carriers, and that this defendant was unable to obtain from said connecting carriers a prompt return of its cars, or to obtain from them empty cars in the place of the loaded cars delivered to them. That this defendant had ample cars in which to ship the products of the mines on its line of road during ordinary production and sale of coal, but on account of the unfor-seen, unusual and unprecedented demand this defendant was unable to supply cars sufficient in which to ship the coal produced by mines that were not wagon-load mines, but that used tipple and loaded directly into the cars, at a great saving of time. That plaintiff's mine was what is called a wagon-load mine, and under the orders of the Interstate Commerce Commission this defendant was not authorized to furnish it with open top coal cars, and that it did tender to plaintiffs box cars in which to load the [fol. 36] product of their mine, which they refused to accept or load.

II

That as to the dates alleged in the complaint one year prior to September 7, 1923, the day on which the complaint herein was filed, this defendant states that the claim of the plaintiffs for damages based upon failure to furnish cars before said date is barred by the Statute of Limitations, and the defendant pleads such statute of limitations as a

bar to any right of recovery herein for failure to furnish cars during that period.

O. E. Swan, Pryor & Miles, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 37] In Circuit Court of Sebastian County

Record Entries

January 10, 1924.

Comes defendant and files demurrer in this cause, November 1, 1923.

January 12, 1924.

Comes on for hearing the demurrer heretofore filed by defendant in this cause, the parties appearing by their respective attorneys, the Court being well and sufficiently advised in the premises, doth overrule*d* said demurrer, to which action of the Court the defendant excepts and is given thirty days to file answer, and this cause is continued for the term.

July 8, 1924.

Comes defendant and files amendment to its answer in this cause; and also, this day, files demurrer to the jurisdiction of this court.

July 8, 1924.

Comes plaintiff and this day files demurrer to paragraphs 1, 2, 3 and 4 of amendment to defendant's answer in this cause.

July 9, 1924.

On this day comes on for hearing and determination the demurrer of defendant to plaintiff's complaint and plaintiff's demurrer to paragraphs one, two and three of de-
[fol. 38] fendant's amendment to its answer.

Both demurrers are submitted to the Court and the Court being well and sufficiently advised in the premises doth overrule defendant's demurrer to plaintiffs' complaint and doth sustain plaintiffs' demurrer to paragraphs one, two and three of defendant's amendment to its answer.

To the action of the Court in overruling its demurrer to plaintiffs' complaint the defendant at the time saved its exception and to the action of the Court in sustaining plaintiffs' demurrer to paragraphs one, two and three of defendant's amendment to its answer the defendant saved its exception.

Plaintiff- withdrew the demurrer to paragraph four of the amendment to the answer.

July 21, 1924.

This day defendant is given five additional days, to file amended answer herein.

January 28, 1925.

This day this cause coming on to be heard, come plaintiffs in person and by their attorneys, U. C. May and Evans & Evans, and comes the defendant by its attorney, Thos. B. Pryor; whereupon, defendant files amendment to answer; and both parties announcing ready for trial, comes a jury of twelve good and lawful men who were regularly selected, empanelled and sworn to try this cause; namely: John Floyd and eleven others. After hearing a part of the evidence, the hour of adjournment having arrived, the jurors were by the Court permitted to separate until tomorrow morning at convention of Court under proper [fol. 39] and usual instruction.

January 29, 1925.

Come the parties hereto by their respective attorneys, and comes the jury heretofore empanelled to try this cause, all as on yesterday and this trial progressed. After hearing further evidence, the hour of adjournment having arrived, the jurors were by the Court permitted to separate until tomorrow morning at convention of Court, under proper and usual instructions.

January 30, 1925.

Come the parties hereto and by their respective attorneys, and comes the jury heretofore empanelled to try this cause, all as on yesterday and the day before, and said trial progressed. After hearing the remainder of the evidence, the instructions of the Court and the argument of counsel, the jury retired to consider of its ver-

dict, and, afterwards, on the same day, returned into open court here and announced that they had been unable to arrive at a verdict; whereupon, the jury was by the Court permitted to separate until tomorrow morning at convention of court, under proper and usual instructions.

January 31, 1925.

Come the parties hereto and by their respective attorneys, and comes the jury heretofore empanelled to try this cause, all as on Wednesday, Thursday and Friday, and said trial progressed. The jury retired to further consider of its verdict, and, afterwards, on the same day, [fol. 40] returned in open court here and announced that they were unable to arrive at a verdict; whereupon the jury was by the Court discharged from further consideration of this cause.

July 6, 1925.

This day comes plaintiff by its attorneys, U. C. May and Evans & Evans, and comes the defendant by its attorney, Thos. B. Pryor, and both parties announcing read for trial, comes a jury of twelve good and lawful men who were regularly impanelled and sworn as required by law, viz: Tom Boyd and eleven others. After hearing a part of the evidence, the hour of adjournment having arrived, the jurors were by the Court permitted to separate until tomorrow morning at convention of court under proper and usual instructions.

July 7, 1925.

Comes the parties hereto and by their respective attorneys, and comes the jury heretofore impanelled to try this cause, all as on yesterday, and said trial progressed. After hearing further evidence, the hour of adjournment having arrived, the jurors were by the Court permitted to separate until tomorrow morning at convention of court, under usual and proper instructions.

July 8, 1925.

Come the parties hereto and by their respective attorneys, and comes the jury heretofore impanelled to try this [fol. 41] cause, all as on yesterday and the day before.

After hearing the remainder of the evidence, the instructions of the court, and the argument of counsel, the jury retired to consider of its verdict, and afterwards, on the same day returned into open court here and *and* announced that it had been unable to arrive at a verdict; and the hour of adjournment having arrived, the jurors were by the court permitted to separate until tomorrow morning at convention of court, under proper and usual instructions.

IN CIRCUIT COURT OF SEBASTIAN COUNTY

RECORD ENTRY OF JUDGMENT—July 9, 1925

Come the parties hereto and by their respective attorneys, and comes the jury heretofore impanelled to try this cause, and said jury retired to consider of its verdict all as on yesterday; and while the jury were deliberating on their verdict, comes defendant by its attorney, Thos. B. Pryor, and files motion to discharge the jury and to declare a mistrial; and while this motion was being argued before the court, the jury returned into open court the following verdict, to wit: "We the jury find for the plaintiffs and assess the damages at $2,000.00. G. W. Lennier, Foreman."

After the rendition of the jury's verdict, the above mentioned motion filed by defendant was by the Court overruled, and defendant excepts.

It is therefore considered, ordered and adjudged that Thomas Barkley and Alton Burnett, Partners as Fax Coal Company, do have and recover of and from the defendant, the Midland Valley R. R. Co., the sum of Two Thousand [fol. 42] Dollars ($2,000.00) damages, together with all their costs herein laid out and expended, for all of which execution may issue.

Defendant is by the court given ten days in which to file motion for new trial.

In Circuit Court of Sebastian County

Record Entries

July 10, 1925.

Comes defendant by its attorney, Thos. B. Pryor, and files motion for a new trial in this cause.

July 27, 1925.

Comes on to be heard defendant's motion for a new trial heretofore filed in this cause on July 10, 1925, both parties appearing by their respective attorneys; and the court, after hearing argument of counsel, and being well and sufficiently advised in the premises, doth overrule said motion. To which action of the court in overruling said motion for a new trial, defendant at the time saved its separate and several exceptions and prays an appeal to the Supreme Court, which is granted; and defendant is given 90 days in which to prepare and file its bill of exceptions.

[fol. 43] In Circuit Court of Sebastian County

Motion for a New Trial—Filed July 10, 1925

Comes the defendant and moves the Court to set aside the verdict of the jury heretofore rendered in this case, and grant it a new trial, and for cause states:

1. The verdict of the jury is contrary to the law.

2. The verdict of the jury is contrary to the evidence.

3. The verdict of the jury is contrary to both the law and the evidence.

4. The verdict of the jury is not supported by sufficient evidence.

5. The Court erred in admitting, over the objections of the defendant, the testimony of the plaintiff, Alton Burnett, as to the profits he made on this coal which were shown by records kept by him, a sufficient showing not hav-

ing been made of the loss of such records as would permit the witness to testify orally in this regard.

6. The court erred in admitting, over the objections of the defendant, the testimony of the plaintiff, Alton Burnett, with reference to an alleged statement made by T. B. Pryor, attorney for the defendant, before the Railroad Commission of Arkansas, as to the jurisdiction of said Commission, to hear and determine a petition of plaintiffs' to require defendant to furnish them cars.

7. The court erred in admitting, over the objections of the defendant, the testimony of the plaintiff, Alton Burnett, as to a statement made by Conductor Pigg, with reference [fol. 44] to stealing cars for the plaintiffs, on re-direct examination.

8. The court erred in admitting, over the objections of the defendant, the contract between the plaintiffs and the United Mine Workers of America, with reference to mining coal for utility corporations, or concerns; Ex. b.

9. The court erred in admitting, over the objections of the defendant, the testimony of the plaintiff, Thomas Barkley, as to what the plaintiffs would have made out of a car of coal, forty-five tons capacity, in June and July, the court permitting the witness to give his best judgment as to the approximate profits.

10. The court erred in admitting, over the objections of the defendant, the testimony of the witness and plaintiff, Thomas Barkley, as to whether or not he had any more or expended any money in the mining enterprise of the plaintiffs in addition to their labor.

11. The court erred in admitting, over the objections of the defendant, the testimony of the witness, W. C. Caudle, with reference to a conversation alleged to have — had by witness and some clerk in the office of the Midland Valley Railroad Company, at Muskogee, over the telephone, with reference to the alleged failure of the Midland Valley Railroad Company to furnish cars to the plaintiffs.

12. The court erred in admitting, over the objections of the defendant, the testimony of the witness, W. C. Caudle, with reference to what information witness gave to the

clerk referred to with reference to the failure of the de-
[fol. 45] fendants to furnish plaintiff with cars, particularly that plaintiffs were threatening suit against the defendant.

13. The court erred, in admitting over the objections of the defendant, the testimony of the witness, W. C. Caudle, that the clerk referred to stated that they had a good lawyer down here and he was an old Greenwood man that would take care of the matter, referred to Mr. Thomas Pryor, the attorney of the defendant.

14. The court erred in admitting, over the objections of the defendant, the testimony of the witness, S. S. Davidson, in which the witness related a conversation he stated he heard between George Peuterbaigh, of the McAlester Fuel Company, and plaintiffs, with reference to an alleged contract whereby plaintiffs agreed to sell to the McAlester Fuel Company the output of their mine, and that said company would see that plaintiffs got all the cars they wanted if they would sell it their coal.

15. The court erred in giving, over the objections of the defendant, instruction No. 1, asked for by the plaintiff.

16. The court erred in giving, over the objections of the defendant, instruction No. 2, asked for by the plaintiffs.

17. The court erred in giving, over the objections of the defendant, instruction No. 3, asked for by the plaintiffs.

18. The court erred in giving, over the objections of the defendant, instruction No. 4, asked for by the plaintiffs.

19. The court erred in giving, over the objections of the
[fol. 46] defendant, instruction No. 5, asked for by the plaintiffs.

20. The court erred in giving, over the objections of the defendant, instruction No. 6, asked for by the plaintiffs.

21. The court erred in giving, over the objections of the defendant, instruction No. 9 asked for by the plaintiffs.

22. The court erred in giving, over the objections of the defendant, instruction No. 1, given by the court on its own motion.

23. The court erred in giving, over the objections of the defendant, instruction No. 2, given by the court on its own motion.

24. The court erred in giving, over the objections of the defendant, instruction No. 3, given by the court on its own motion.

25. The court erred in giving, over the objections of the defendant, instruction No. 4, given by the court on its own motion.

26. The court erred in giving, over the objections of the defendant, instruction No. 5, given by the court on its own motion.

27. The court erred in refusing to give, at the request of the defendant, instruction No. 1.

28. The court erred in refusing to — instruction No. 4, asked for by the defendant.

29. The court erred in refusing to give instruction No. 6, asked for by the defendant.

[fol. 47] 30. The court erred in refusing to give instruction No. 9, asked for by the defendant.

31. The court erred in refusing to give instruction No. 3, as asked for by the defendant; and erred in modifying said instruction, over the objections of the defendant, and in giving the same as modified.

32. The court erred in refusing to give instruction No. 10, as asked for by the defendant; and erred in modifying said instruction, and giving the same as modified.

33. The court erred in refusing to give instruction No. 11, as asked for by the defendant; and erred in modifying said instruction, over the objections of the defendant, and in giving the same in its modified form.

34. The court erred in refusing to give instruction No. 13, as asked for by the defendant; and erred in modifying said instruction, over the objections of the defendant, and in giving the same as modfied.

35. The court erred n refusing to give instruction No. 16, as asked for by the defendant; and erred in modifying said

instruction, over the objections of the defendant, and in giving the same in its modified form.

36. The court erred in refusing to give instruction No. 17, as asked for by the defendant; and erred in modifying said instruction, and in giving the same in its modified form, over the objections of the defendant.

37. The court erred in giving to the jury, over the objections of the defendant, the court's instruction No. 6, given by the court after the jury had deliberated upon the case for some time.

[fol. 48] 38. The court erred in overruling the motion of the defendant to discharge the jury and declare a mistrial, in this case because of the misconduct of the jury, R. A. McEachen, on the grounds stated in said motion, which motion, and the testimony taken before the court in support thereof, are hereto attached and made a part of this motion.

39. The court erred in overruling defendant's demurrer in this case.

40. The court erred in overruling defendant's special demurrer in this case.

(Signed) Midland Valley Railroad Company, by E. O. Swan and Thos. B. Pryor.

[File endorsement omitted.]

[fol. 49] In Circuit Court of Sebastian County

Thomas Barkely & Alten Burnett, Partners as Fax Coal Company, Plaintiffs,

vs.

Midland Valley Railway Company, Defendant

Bill of Exceptions—Filed October 16, 1925

Caption

On this day July 6th, 1925, the above entitled cause coming on for trial before the Honorable John E. Tatum, Judge

presiding, came the plaintiffs by their Attorneys, Evans & Evans, and came the defendant by its Attorney, Thomas B. Pryor, and the parties announcing ready for trial, a good and lawful jury was empanelled and sworn to try the issues joined.

Thereupon the plaintiffs, in order to maintain the issues upon their part, introduced the following testimony, to-wit:

[fol. 50] PLAINTIFFS' TESTIMONY

ALTEN BURNETT, one of the plaintiffs, being sworn, testified as follows:

Charles Evans:

Q. State to the jury your name?
A. Alten Burnett.
Q. Where do you live?
A. Midland, Arkansas.
Q. What is your occupation or business?
A. I am a coal miner.
Q. How long have you been in that business?
A. Ever since I was fourteen (14 years old—twenty-one (21) years.
Q. You have had experience in the coal fields in Sebastian county?
A. Yes, sir.
Q. In April, 1920, did you and Mr. Barkley become owners of any coal mine indirectly in Sebastian county?
A. No, sir; I did not.
Q. When did you get in?
A. November, 1921.
Q. The other plaintiff, Thomas Barkley, was in it at the time you purchased?
A. Yes, sir.
Q. And you have been in it for some considerable time?
A. Yes, sir.
[fol. 51] Q. He first went in in April, 1920?
A. I do not know.
Q. But in November, 1921, were there any other parties with you and Mr. Barkley?
A. Yes, sir.
Q. Who?

A. Mr. Woodard, and Tinks Miller.

Q. Now, how long did the other two stay in?

A. Not over a month; I do not remember just how long.

Q. Not over a month or two after you went in?

A. No, sir.

Q. How did they get out?

A. We bought them out.

Q. You and Barkley bought them out and owned it from that time on?

A. Yes, sir.

Q. And operated it?

A. Yes, sir.

Q. What was the condition of the mine at the time you went in, what was the state of its development?

A. I think the slope was down something like three or four hundred feet maybe five hundred feet, and two entries turned off and two rooms on one and about three or four on the other.

Q. Alright, what were you doing, you and Mr. Barkley; did you keep on developing the mine?

A. Yes, sir.

[fol. 52] Did you mine some coal?

A. Yes, we mined coal a part of the entries in the slope.

Q. How many men did you work from the time you went in there?

A. I do not remember. I think there were about eight or nine where we were?

Q. But when you first went in there how many did you work then?

A. Not over four or five.

Q. Did the four or five include yourself and Mr. Barkley?

A. No, sir; four or five besides ourselves.

Q. These men that you were working with, was that the property that you had leased of Mr. C. C. Woodson?

A. Yes, sir.

Q. How far was that mine from the Midland Valley switch?

A. A little more than a quarter of a mile.

Q. From the switch or main line?

A. From both.

Q. What switch is it called?

A. The Jackson Spur.
Q. What is the name of your company?
A. The Fax Coal Company.
Q. That is the name you operated under?
A. Yes, sir.
Q. What name did the Midland Valley Railroad Company list it under?
A. Jackson Spur.
Q. Was there any strike on by the Union Miners in the [fol. 53] Spring of 1922?
A. Yes, sir.
Q. What time was that called?
A. April first.
Q. Three mines in Sebastian county, and in this whole territory was, so far as that is concerned, were operated by the Union Mine Workers?
A. Yes, sir.
Q. And the mines could not operate on open shop at all?
A. No, sir.
Q. All the miners were Union labor operators?
A. Yes, sir.
Q. You and the other mines in this country?
A. Yes, sir.
Q. After the strike was called on April first, 1922, what did the strike cover, what district, was it the whole United States?
A. Yes, the whole United States.
Q. A strike on all the Coal Miners in the States?
A. Yes, sir.
Q. Do you remember when that strike was settled?
A. The best I remember, about the 15th of August, 1922.
Q. From the time the strike was called on April first, 1922, could the operators mine and sell coal?
A. Well, we had a special contract with the United Mine Workers, what is called a Public Utility Contract under which we could mine and sell coal to certain public utilities. there were five or six.

[fol. 54] Mr. Pryor:

Q. Was that contract verbal or in writing?
A. Writing.

Mr. Evans:

Q. The original contract was introduced in the other trial?

A. Yes, sir.

Q. And turned over to the Court stenographer?

A. Yes, sir.

Q. There were five or six utilities you could sell coal to, is that correct?

A. Yes, sir.

Q. Name the utilities you could sell to?

A. I do not know whether I can name them all or not; Ice Plants, Light Plants, Sanitariums, Hospitals, that is all I can name.

Q. Could you, under that contract, sell coal direct to the railroad company?

A. No, sir.

Q. The contract you had with the United Mine Workers authorized members of the United Mine Workers to work in the mines and dig coal and you could sell the coal to the public utilities?

A. Yes, sir.

Q. Had you sold coal to the Midland Valley Railroad Company, or any railroad company, or any industry other than named in the contract with the United Mine Workers of America what would have been the result?

[fol. 55] A. The miners would have quit?

Q. The members of the United Mine Workers would have quit?

A. Yes, sir.

Q. Who was your agent, who had charge of the sales of your company during the time you were operating this mine?

A. W. C. Caudle.

Q. He was the sales agent and had charge of the coal throughout the entire time you were operating the place?

A. Yes, sir.

Q. During the season of 1922, how much coal could you produce, and how much did you produce?

A. About a car a day.

Q. You were producing and loading about a car a day?

A. Yes, sir.

Q. At any time in June or July, 1922, did Floyd Tyler, Agent of the Midland Valley Railroad Company—did you know him?

A. I did not know him until he came down there that day and told me his name.

Q. What was he?

A. He was the agent of the Midland Valley Railroad Company, at Excelsior.

Q. He came to your place when?

A. Sometime the latter part of June?

Q. In 1922.

A. Yes, sir.

[fol. 56] Q. And had a conversation with you?

A. Yes, sir.

Q. Tell the jury what that conversation was and who was present and all about it?

A. He came up there with Mr. James Fitzjerald, came up there and wanted to know if he could buy our coal; and I did not know who he was and asked him his name, and he told me who he was, and I said you are the agent at Excelsior, and he said yes; and I said we cannot sell you our coal, you are agent for the Railroad Company, and we have a contract with the mine workers whereby we are not allowed to sell coal to the railroad companies.

Mr. Pryor: The defendant objected to that character of testimony at the last trial on the ground that there was no authority in Mr. Tyler with whom he said he had the conversation on that subject that he wanted to buy the coal—he did not have any authority whatsoever to purchase coal for the Railroad Company or its behalf. That he was not the purchasing agent for the Midland Valley Railroad and therefore had no authority to purchase coal and any statement that he made in that connection in that matter would not be binding upon the railroad at that time, and we desire to insist upon our objections at this time.

Mr. Evans: It is the same objections that was urged in this case at the last term of court, when this case was tried. That is to be determined upon the case what he said on that [fol. 57] occasion. He objects to this evidence on the ground that Mr. Tyler was not the purchasing agent of the Midland Valley Railroad Company and did not have au-

thority to buy the coal. The evidence will show what agent had authority to represent the railroad company in that respect. They made their objections and saved their exceptions and the court overruled their objections to the introduction of the testimony in this case. There is only a part of the testimony that goes to the jury, the ultimate facts.

The Court: The objection is overruled at present and if it develops upon the whole case that this man had no authority to represent the railroad company, the defendant in this case, the court will exclude it.

Mr. Evans: That is right. That is the ruling and the testimony that was submitted to the jury as I take it.

Mr. Pryor: The burden will be on them that he had the authority and we object to any statement purporting to have been made by Mr. Tyler by any evidence to establish his authority that he was the agent. And I want the record to show that we are objecting especially to this character of testimony whether we make a specific objection to each question and answer.

The Court: Your objections and exceptions are all saved.

Mr. Evans: That is alright.

Mr. Charley Evans:

Q. Go ahead and state the conversation?

[fol. 58] A. Before I found out who he was I sent for my partner by the rope rider and told him to come out and he was there and when the conversation took place he said——

Q. Who?

A. Mr. Tyler said I am buying this coal for the Ice Company, the Ice and Fuel Company, I am not sure what style the firm was, in Muskogee; he said he would give us $3.55 for the coal and I told him that I would not quit Mr. Caudle for that. He had been good to us and, he said, well either that or a shut down; he said if you don't—he said if you will let me have the coal you could work on but if you do not I will shut you down. I told him I would not consider it; would not quit Mr. Caudle. He said that Mr. Caudle had not billed two cars they were loaded down there and they were not full; had no billing for it or something like that. We refused to let him have it and when he got up and started he said, well if you don't let me have it I will shut you down.

Q. How long was he there?

A. I do not remember—he was not there very long.

Q. Wasn't Mr. Fitzjerald there during the whole time?

A. Yes, sir.

Q. Mr. Thomas Fitzjerald?

A. He went away with him.

Q. He came there with him and went away with him?

A. Yes, sir.

Q. Was there and heard the whole conversation?

[fol. 59] A. I do not know whether he was really close enough to hear the conversation or not?

Q. Mr. Fitzjerald?

A. Yes, sir.

Q. He came there with him and went away with him?

A. Yes, sir.

Q. You and your partner was there?

A. Yes, sir.

Q. Was there anyone else there?

A. I think the trip rider was on the tipple, the best I remember.

Q. Did you have any empty cars on the switch at that time?

A. Yes, sir; one.

Q. What happened to it?

A. It was pulled out that afternoon when the train came back from Hartford.

Q. Pulled out the empty?

A. Yes, sir.

Q. They had set you this other car in there before?

A. Yes, sir.

Q. Before Mr. Tyler came up there?

A. Yes, sir.

Q. After he came out there they pulled this empty car away?

A. Yes, sir.

Q. Tell the jury what efforts you and your partner made then to try to get cars?

[fol. 60] A. Mr. Caudle ordered all the cars and we called him several times and he said——

Objected to, objection sustained.

Q. Did you ever go to see Mr. Tyler?

A. No, sir; I did not go to see Mr. Tyler, he was transferred.

Q. Did you go to see anybody?

A. I saw Mr. Powers.

Q. Who is Mr. Powers?

A. The agent that replaced Mr. Tyler.

Q. How long after this took place until the- moved Mr. Tyler?

A. I do not remember.

Q. About how long?

A. I think maybe a month or two months.

Q. You went to see Mr. Powers and tried to get cars?

A. Yes, sir.

Q. He was the agent of the Midland Valley Railroad Company?

A. Yes, sir.

Q. Of the Midland Valley at Excelsior?

A. Yes, sir.

Q. And was also in charge of this business as agent?

A. Yes, sir.

Q. Running this business; What did Mr. Powers say about it?

A. He said that he had orders not to set us anything but box cars.

[fol. 61] Q. He said that he had orders not to set you anything but box cars?

A. Yes, sir.

Q. Could you handle your coal in box cars?

A. No, sir. I told him we could not and I told him we did not have any business for box cars they would not take it that way, said it wrecked the coal to handle it in box cars, too much handling.

Q. Did they ever set you any cars after Mr. Tyler came out that evening and said they would shut you down?

A. Yes, sir; they furnished us cars after that.

Q. How many?

A. Twelve or fourteen maybe.

Q. Altogether?

A. Altogether, I dod not know how many.

Q. You state you were able to load at least one car a day?

A. Yes, sir.

Q. During this time?

A. Yes, sir.

Q. Is it not a fact that from that time you would have done more work and developing the capacity of your mine would have increased at the time?

A. Yes, sir.

Objected, objection sustained.

Mr. Evans:

Q. Al-right. Later on would the condition of the development of your mine justify more cars?

[fol. 62] A. Yes, sir.

Q. How many cars could you have loaded in the fall of 1922?

A. A car and half or two cars a day, probably two cars a day.

Q. During the time from June on, what was the condition of the market?

A. It got bad, I think, about June, the price of coal or demand or whatever you call it was on the slump until October. I do not know what we sold the last coal for exactly.

Q. Do you know what the next profits the Fax Coal Company got for the coal it mined and sold during this period of time from June and July until October when you finally quit getting any cars at all?

A. Not exactly; but I thinm I have got the papers on it.

Q. What was the approximate profit——

Mr. Pryor: We object to that question, and he asked the witness the question to which would be the basis to his claim or damage what was the profit on a car of coal or a ton of coal, and this witness answered that he did not know exactly; and then he asked the witness what it was approximately, and we object to it on the ground that that is the best evidence to show the operation of the mine.

Mr. Evans: This witness can state approximately the [fol. 63] profit if he knows not the actual dollars and cents but, approximately what it is if he knows.

Mr. Charley Evans:

Q. Did you have the record showing the cost of the coal and what you made out of it, the profit thereon?
A. Yes, sir.
Q. Where is that?
A. They got destroyed in the rain.
Q. What did you do; where had you been?
A. Had been to Fort Smith to see Mr. Grant.
Q. When you had your case up before the railroad commission?
A. Yes, sir.
Q. You took your records up there and was out in the rain?
A. Yes.
Q. And they were destroyed?
A. My car top was not good and it leaked.
Q. And the records were destroyed?
A. Yes sir.

The Court: On that evidence the objection is overruled.

Mr. Pryor:

Q. They were not destroyed?
A. They were unreadable.
Q. Have you got the record?
A. I have them at home part of them. I am not sure [fol. 64] whether I have them or not.

The Court: The witness claims they are unreadable so the objection is overruled.

The defendant saved an exception.

Mr. Evans:

Q. Can you tell approximately the net profit per car that you made on the coal that you mined and sold during this period?

Mr. Pryor:

Q. I want to ask him a question. Did you keep these records or the bookkeeper?
A. Yes, sir.

Q. You kept the books, did you?
A. Yes, sir.

Mr. Charley Evans:

Q. Al-right.
A. It was something about $100 and was about $100 per car profit.
Q. You have stated that you took out a car that day?
A. Yes, sir.
Q. During this whole period?
A. Yes, sir.
Q. You stated that the approximate net profit on coal was about $100?
A. Yes, sir.
Q. Can you tell the jury the cost of mining the coal?
A. Yes, sir.
Q. State to the jury what the different items of cost are [fol. 65] in mining coal?
A. 15¢ a ton.
Q. For hauling the coal from the mine to the car?
A. 50¢ a ton.
Q. You are giving this from your recollection?
A. Yes, sir.
Q. Can you remember what ties and props, etc., were?
A. I think 10¢.
Q. You do not remember just the price?
A. Mr. Caudle's records will show that. They change a very few times.
Q. The market price?
A. Yes, sir.
Q. After Mr. Tyler came down there and told you they wanted this coal and was going to shut you down, please state to the jury what efforts you made and what efforts you had Mr. Caudle to make to get the cars? Tell the jury in detail how many times you went for cars, if you remember, if more than once, and if Mr. Caudle called the home office at Muskogee to your knowledge, and if he call them while you were there or if you did anything, tell the jury in detail what you did to try to get cars?
A. I called and tried to get Mr. Powers once and I do not know how many times my partner called. We came to see Mr. Caudle some three or four times and Mr. Grant

called and I saw the commissioners at Little Rock once while I was there to get us cars.

[fol. 66] Q. Did Mr. Grant bring some proceedings before the Arkansas Railroad Commission trying to compel the Railroad Company to furnish cars?

A. Yes, sir.

Q. Did he make any trips to Little Rock?

A. Made one trip to Little Rock.

Q. Did Mr. Grant also bring suit for you at that time?

A. Yes, sir.

Mr. Evans: The complaint is in and we will treat it in evidence in this case.

Mr. Pryor: I do not recall that it was put in before.

Mr. Evans: Yes, I think it was put in.

Mr. Pryor: As I suggested to the jury the complaint is not evidence.

Judge Evans: We will take that up when we get to it.

Mr. Charley Evans:

Q. You state that Mr. Grant brought some proceedings before the Arkansas Railroad Commission?

A. Yes, sir.

Q. To try to compel the Midland Valley Railroad Company to furnish you cars?

A. Yes, sir.

Q. You went on a trip with him down there?

A. Yes, sir.

Q. Was there any one there representing the Midland Valley Railroad Company?

A. Yes, sir.

Q. Who was it?

A. Mr. Pryor, Mr. Swan and Mr. Powers was there.

[fol. 67] Q. The agent at Excelsior at that time?

A. Yes, sir. I do not remember whether anybody else was there or not.

Q. Did Mr. Pryor make a statement to the Railroad Commission about its jurisdiction?

A. Yes, sir.

Q. State to the jury what it was?

A. He told the Railroad Commission——

Mr. Pryor: We object to that. I do not remember that being in evidence before, or any statement that was made to the Railroad Commission with reference to this commission. It has not got anything to do with this law suit, that was merely a proceeding on application before the Arkansas Railroad Commission to request the Midland Valley to furnish cars to the mine; any statement that I made would certainly have no effect upon this law suit. We were there ready to proceed.

The Court: It might throw light on this case if he knows. The objection is overruled, defendant saved exception.

Mr. Evans:

Q. About the jurisdiction, state what statement Mr. Pryor made?

A. He told the Commissioners they had no jurisdiction over the case as they had already filed suit in the court of law, is the best I remember his statement.

Q. That you had already filed suit in a court of law?

A. Yes, in the circuit court at Greenwood, something like that.

[fol. 68] Q. Do you remember anything else he did trying to get cars. You went and talked to Mr. Powers or called and got Mr. Caudle who ordered for you, who was your agent, and you filed an application before the Railroad Commission was there anything else?

A. The only thing we did was to try to get Mr. Woodson to have some cars set at Montreal on the Frisco.

Q. That is not admissible. Do you remember the last cars furnished you?

A. No sir; I do not. I do not know when they furnished the last cars.

Q. Do you remember that it was in October, 1922, that they furnished you the last cars?

A. No, sir; I do not know.

Q. What did you do with the mine after they quit furnishing you cars?

A. We kept the water pumped out and kept it ready for operation.

Q. Who did that?

A. Mr. Barkley and myself.

Q. Did you and he work there continuously from the time they quit furnishing you cars until finally you had to sell it?

A. Just enough to keep the water out is about all, to keep the mine in shape we would have to clean up a little fall of rock sometimes, something like that.

[fol. 69] Q. I was under the impression that it was developed at the last trial that you and Barkley worked seventy-two hours, is that correct?

A. Yes, sir.

Q. Tell the jury about that, what the circumstances were?

A. That was when we broke into another mine and it was full of water and we had to start there and pump water out to keep the pump from getting under water.

Q. Was that during this period June and July?

A. I believe it was before that.

Mr. Pryor: We object to that. The fact that they worked seventy-two hours would certainly be competent in this case.

Mr. Charley Evans: We withdraw the question.

Q. What finally became of the mine?

A. We sold it to some men at Huntington.

Q. About when.

A. The best I remember about the 8th of January, 1923, something like that.

Q. Why did you sell it?

A. We stayed there as long as we could.

Q. Stayed there as long as you could?

A. Yes, our financial condition would not permit us to stay there any longer.

Q. Why would not your financial condition permit you to stay there any longer?

A. We strained our credit to the breaking point.

Q. Why did you strain your credit to the breaking point?

[fol. 70] A. We could not get cars.

Q. Alright. Because you could not get any cars to ship your coal?

A. Yes, sir.

Q. And you finally sold out the 8th of January, 1923?

A. I think that is the date, yes, sir.

Q. You say you sold out about the 8th of January, 1923?

A. Yes, sir.

Q. How much longer would your contract with Woodruff run?

A. The best I remember until April 1st, 1925.

Q. Until April 1st, 1925?

A. Yes, sir.

Q. A little more than two years?

A. Yes, sir.

Q. If you had been furnished cars during that time could you, or was there any reason why you could not operate?

Mr. Pryor: We object; there is nothing in the complaint to cover that at all.

Judge Evans: January, 1923, is when he sold out. They could not sell out the mine and after that claim damages indefinitely.

Here the complaint was read.

The Court: The objections of counsel is mere absence. Of course their failure to furnish cars after they sold out is too remote.

Plaintiff saved an exception.

Objection sustained, Plaintiff saved an exception.

Plaintiffs offer proof that by reason of the fact the defendant's failure to furnish cars to transport the coal of the plaintiff- that plaintiffs were compelled to abandon [fol. 71] their operation and sell the mine at a great loss. Offer of proof refused, plaintiffs except.

Mr. Charley Evans:

Q. Do you know the amount of development work and equipment that had been expended in developing the mine and equipping the mine up to the time the railroad company refused to further furnish the cars?

A. No, sir; I do not know exactly.

Q. Do you know approximately?

A. Something like $8,000 *dollars*, I believe.

Q. In developing and equipment?

A. Yes, sir.

Q. Up to that time?

A. Yes, sir.

Q. When you sold out you got some pay for the equipment. Is that right?

A. Yes, sir.

Q. What did you seel for when you sold out?
A. $700 *dollars*, I believe.
Q. Did you have further equipment in the mine than that?
A. Yes, sir.
Q. Coal mining equipment?
A. Yes, sir.

Cross-examination.

Mr. Pryor:

Q. You testified in this case at the last term of court when it was tried?
[fol. 72] A. Yes, sir.
Q. What time of the year was it at the time you were before the Railroad Commission at the time you say you went there?
A. The best I remember in December, 1922.
Q. In December, 1922?
A. Yes, sir.
Q. That was two years and a half ago approximately?
A. Yes, sir.
Q. You testified here at the last term of this court? Did you testify anything with reference to the statement that I made before the Railroad Commission?
A. Yes, sir.
Q. If I made any such statement at that time why didn't you tell it to the jury before?
A. I do not know.
Q. You were sworn then to tell the truth, and the whole truth?
A. I was not asked the question.
Q. Were you asked the question this time?
A. Yes, sir.
Q. Do you know why you were not asked the question before?
A. No, sir.
Q. Do you mean to tell this jury that I stated to the Railroad Commission that they were without jurisdiction?
A. Yes, to the best of my remembrance.
Q. You did not remember well enough, did you, at the last term of court?

[fol. 73] A. I was not asked the question.

Q. Had you ever made that statement to anybody but your lawyer Judge Evans and Charley Evans or anybody else with reference to my statement made before the Railroad Commission?

A. I do not remember if I did.

Q. You remember—when was the first time you ever made that statement since December, 1922, to whom did you first make that statement?

A. I do not remember.

Q. Had you made it to anyone before this term of court?

A. Yes, sir.

Q. Who to?

A. I do not know.

Q. I mean your lawyers; you told them when they asked you the question. When did you tell Mr. Charley Evans that?

A. I do not remember just exactly when I did tell him.

Q. You did not tell him until this term of court?

A. I do not remember just when I did tell him.

Q. Do you know why the Commission did not have the proceedings down there on your application for cars?

A. I think so.

Q. What was the reason?

A. It was dismissed by our counsel.

Q. It was not dismissed at that day. Wasn't it continued?

A. They dismissed the case that day.

Q. You say they dismissed the case that day?

A. The very last day.

[fol. 74] Q. He did?

A. Yes, sir; dismissed the case.

Q. Why did he dismiss the case?

A. I do not know.

Q. Did he dismiss the case without conferring with you about it?

A. The only thing he asked me about was if our witnesswere there?

Q. You were there, were you not?

A. Yes, sir.

Q. Mr. Barkley was there?

A. Yes, sir.

Q. Did you testify in the case down there?

A. No, sir.

Q. You did not get on the stand, did you?

A. I do not think I did; I do not remember it.

Q. You state to the jury under your oath that Mr. Grant dismissed it on that day?

A. Yes, sir.

Q. You say that the date he dismissed it was in December?

A. I am not sure about it being in December, to my best remembrance it was December.

Q. It was in 1922?

A. Yes, sir.

Q. Are you positive of that?

A. Yes, sir.

Q. I will ask you if the case was continued in December [fol. 75] and set for hearing at Little Rock on January 26, 1923, at 9:30 A. M. and continued on your motion?

A. He said I will dismiss this case and refile another one, the best I remember; I mentioned it when he told the Commission.

Q. Do you remember whether he refiled it?

A. I think he did, yes, sir.

Q. Did you receive notice from the Railroad Commission?

A. No, sir.

Q. After that?

A. No, sir.

Q. You never went before the Commission but one time did you?

A. That is all.

Q. While you were before the Railroad Commission you did not testify. I will ask you if you did not get a copy of that notice from the Railroad Commission (presenting a paper).

A. No, sir; I did not.

Q. You never saw a copy of it?

A. No, sir.

Q. It was sent to your attorney, G. L. Grant, at Fort Smith?

A. He might have gotten it, yes, sir.

Q. You state you never ordered the cars yourself?

A. No, sir; I did not.

Q. You did not have anything to do with that part of it?

A. We ordered Mr. Caudle to order them.

[fol. 76] Q. You don't know whether Mr. Caudle ordered the cars or not?

A. No, sir; I do not know.

Q. You do not know how many, or where, or how he ordered them?

A. No, sir.

Q. You stated that you talked to Mr. Powers about it?

A. Yes, sir.

Q. He became agent at Excelsior?

A. Yes, sir.

Q. After Mr. Powers became agent were you furnished any cars?

A. Yes, sir; we were furnished a few.

Q. How many were you furnished after Mr. Powers came there as agent?

A. I think 11 or 12.

Q. When did Mr. Powers come there as agent?

A. I believe it was in August; I am not sure.

Q. It was in August?

A. August or September, I am not sure.

Q. He furnished you 11 or 12 cars?

A. Yes, sir.

Q. When were those cars furnished—during what month?

A. The best of my remembrance he furnished us six cars just about as fast as we could load them.

Q. When was it—what month?

A. Directly after he came in.

Q. Would you say August or September?

[fol. 77] A. I will not say positively.

Q. Did they ever furnish you box cars for you to load coal in?

A. They set -wo; yes, sir.

Q. Did you refuse to load box cars?

A. Yes, sir.

Q. You told him you would not load box cars?

A. Yes, sir.

Q. Your mine is what is known as a wagon loading mine?

A. Yes, sir.

Q. You said you had a contract with the United Mine Workers by which you could operate your mine?

A. Yes, sir.

Q. But could not sell any coal to the railroad company?

A. Yes, sir.

Q. The contract provided that you could sell coal to public utilities such as light and traction companies and ice company's sold storage companies and plants of that sort?

A. Yes, sir.

Q. But you could not sell to any one else?

A. Five or six public utilities.

Q. If the railroad companies could not get coal from the coal companies to run its engines how could you get your coal to various utilities?

A. I do not know.

Q. You do know don't you?

A. I do not think they could get there.

[fol. 78] Q. As a matter of fact it was understood with the railroad company to confiscate coal?

A. No, sir.

Q. You knew they did do that?

A. Yes, sir.

Q. They had to have coal to run their engines before they could get to haul coal?

A. I guess so.

Q. You guess that?

A. Yes, sir.

Q. In view of that it was the understanding with the railroad companies to take so much of the coal as was necessary to ship to the utility operators.

A. I was not aware of the fact.

Q. Did you have a contract for selling your coal?

A. Yes, sir, partially.

Q. Did you say Mr. Caudle sold it?

A. Yes, he was our agent.

Q. You do not know anything personally about it?

A. No, sir.

Q. You le-t that entirely with him just like you left entirely with him the matter of ordering cars?

A. Yes, sir.

Q. Did you pay Mr. Caudle any commission for handling the coal?

A. Yes, sir.
Q. How much did you pay him?
A. Six per cent or a minimum of 25¢ a ton.
[fol. 79] Q. Was that the minimum?
A. Yes, sir.
Q. The car ordinarily holds fifty tons?
A. Forty-five or fifty tons.
Q. You gave him from ten to twelve fifty minimum?
A. Yes, sir.
Q. What does minimum mean—what was his maximum?
A. Six per cent.
Q. That is the maximum?
A. Yes, sir.
Q. You say you bought into this mine in November 1921?
A. Yes, sir.
Q. Who did you buy from?
A. A man named Luke Hammond.
Q. What interest did you buy from him?
A. One-fourth.
Q. What did you pay him for it?
A. $150.
Q. That was in November, 1921?
A. Yes, sir.
Q. According to that the mine was worth $600; you paid $150 for one-fourth interest and only four of you in there?
A. Yes, sir.
Q. In November, 1921, did you buy anybody else out?
A. Yes, sir.
Q. Who else did you buy out?
A. Mr. Barkley and myself bought out our other two partners.
[fol. 80] Q. Who were they?
A. Mr. F. M. Woodward and Pickens Tilberry.
Q. They owned a half interest; what did you have?
A. They owned one-fourth interest.
Q. Together or each?
A. Each.
Q. A fourth interest each?
A. Yes, that is a half together?
Q. What did you pay them for this half interest?
A. The best I remember I paid them something like a $120 or $130 apiece; and took up this note against their place.

Q. How much was that note?
A. $300.
Q. Together?
A. That would be a $150 more apiece.
Q. That was $275 each you paid them?
A. Something like that I do not remember exactly.
Q. The two of them would be $550 that you paid each, is that right?
A. Something like that, yes, sir.
Q. How about the fault in the mine? Do you know anything about striking a fault in the mine?
A. Yes, sir.
Q. When did you strike the fault in the mine? Was that the time you broke into the other mine you testified about?
A. No, sir.
[fol. 81] Q. When did you break into the other mine?
A. Sometime in 1923, but I do not know; I do not know whether it was in the spring or summer.
Q. What effect did that have on the mine after you broke into the other mine; did it fill it with water?
A. Yes, we had to pump the water out of it.
Q. You had to pump the water out of the mine?
A. Yes, it came into our mine; we did it on purpose.
Q. You broke into it on purpose?
A. Yes, sir.
Q. Did you strike the fault on purpose?
A. No, sir.
Q. What time was it you struck the fault?
A. I think they struck the fault before I went there.
Q. They had struck the fault?
A. Yes, sir.
Q. You knew that the fault was there when you broke in there?
A. We sure did, yes, sir.
Q. Did you do any drilling or prospecting there to ascertain the effect of the fault?
A. No, sir.
Q. When did you strike the fault?
A. It was during the work, during the development of the work, just went off and left it like it was.
Q. That is a pretty good way to handle a fault, the coal just simply played out?

A. Played out there, yes, sir.

[fol. 82] Q. You do not know what became of the fault of coal?

A. No, sir.

Q. All faults are that way?

A. Most of them, yes, sir.

Q. You do not know whether the coal was up or down?

A. Sometimes it is; some of it on the level.

Q. How many men did you work in the mine at one time?

A. That we had hired?

Q. Yes, sir.

A. Eight or nine is the most we ever had I believe.

Q. You did not work it under the laws of Arkansas?

A. Yes, sir.

Q. You didn't have any air courses in the mine?

A. Yes, sir.

Q. When you sold out how much did you sell out for?

A. $700.

Q. You got $700 yourself?

A. No, sir.

Q. You and your partner together?

A. Yes, sir.

Q. You got $350 apiece?

A. Yes, sir.

Q. Did that cover the mine equipment and everything?

A. No, sir.

Q. What did it cover?

A. We sold everything we had?

Q. You sold everything and got out of the mine $350?

[fol. 83] A. Yes, sir.

Q. Sold for $700, that is $350 apiece?

A. Yes, sir.

Q. Had you sold the machinery before that time?

A. No, sir.

Q. You never had?

A. No, sir.

Q. You sold your interest to some men in Huntington, was that the particular mine?

A. Yes, sir.

Q. Who were they?

A. I do not know whether I can name all of them; I can name practically all of them. Claude Spiegal, Henry

Freeman, Jim Harrison, Bon Anderson, Dave and Robert Fox.

Q. Who else, W. C. Doctroman?

A. I do not remember his being in the deal; but he might have been.

Q. You did not sell to Ben Hill and Will Graham?

A. No, sir.

Q. Do you know how long Doctorman and these people owned it?

A. No, sir.

Q. Do you know what they did with it after they got out?

A. No, sir.

Q. You do not know that they built a tram from the mine to the spur?

[fol. 84] A. Yes, sir.

Q. They did do that?

A. Yes, sir.

Q. It was operated there as a tipple mine?

A. Yes, sir.

Q. You say you talked to young Tyler that is Floyd Tyler?

A. Yes, sir.

Q. You know his father?

A. Yes, sir.

Q. You talked with the young man?

A. Yes, sir.

Q. He told you he wanted it for the Ice & Fuel Company in Muskogee?

A. Yes, sir.

Q. Did he give you the name of the Ice and Fuel Company?

A. I think he did, but I do not remember what it was?

Q. You do not remember the name he gave you?

A. No, sir,

Q. He did not tell you he was buying it or trying to buy it for the Midland Valley Railroad Company?

A. No, sir; he did not.

Q. You say the strike was called April first?

A. Yes, sir.

Q. That was a general strike all over the country?

A. Yes, sir.

Q. And the strike ended August 15th, that year?

A. The best I remember.

[fol. 85] They signed up that day?

A. Yes, sir.

Q. April, May, June, July to August 15th, four months and a half that the strike continued?

A. Yes, sir.

Q. Did you receive cars during that period?

A. Yes, some cars.

Q. You were making no complaint for failure to receive cars during that period from April first, to August 15th——

Mr. Evans: June?

Mr. Pryor: The latter part of June?

A. Yes, sir.

Q. April, May and June, three months out of four you did get cars during the strike?

A. Yes, sir.

Q. The demand for coal advanced then?

A. No, sir, the demand for coal did not get very strong, for coal until July, and the latter part of August.

Q. When the strike was off the demand increased?

A. Yes, sir; after the strike was off; about the time the strike was called off, somewhere about that time.

Q. Then it was during the strike period that you suffered for want of cars?

A. Yes, we did not get all the cars we wanted during the strike period.

[fol. 86] Q. During the months of April and May?

A. No, sir; until the latter part of June.

Q. I will ask you if the Midland Valley did not furnish you one hundred per cent of the cars you ordered from the first day of April, up till the first day of September and the records of the Midland Valley Railroad Company shows it; that you were given every car that you demanded and that the records of the Midland Valley will show that; that you received one hundred per cent of the cars ordered for that period?

A. No, sir.

Q. What per cent of the cars you ordered did you receive from April first till the first of September?

A. I do not know what per cent it would be.

Q. You do not know whether it was one hundred per cent; or not?

A. I know that we ordered some cars that we did not get.

Q. Who ordered them?

A. Mr. Caudle.

Q. How do you know he did?

A. We authorized him to.

Q. You do not know whether he ordered them or not?

A. No, sir.

Q. You just relied on Mr. Caudle's ordering them?

A. Yes, sir.

Q. The only time you gave him orders for cars was the day you testified when Mr. Powers was there as agent?

A. Yes, sir.

[fol. 87] Mr. Charley Evans:

Q. They furnished you all the cars that you ordered and wanted up to the time Mr. Tyler came out there and demanded your coal?

A. No, I do not think so.

Q. But from that time on your trouble began?

A. Yes, sir.

Q. From the time Mr. Tyler went there and demanded the output of your mine?

A. Yes, sir.

Q. And he said that he would shut you down if you didn't let him have it?

A. Yes, sir.

Q. After Mr. Tyler came there you state they furnished you some cars?

A. Yes, sir.

Q. In August or September whenever Mr. Powers came there?

A. Yes, sir; directly after he came there.

Q. What conductor brought the cars to you?

A. Mr. Pigg.

Q. Did Mr. Pigg ever make a statement to you about how he got the cars or where he got them for your mine?

A. The best I remember, the last he brought in he said something to me about what are you going to give me for stealing those cars for you, or something like that?

Mr. Pryor: We object because that is not direct examination.

Mr. Evans: I merely overlooked it.

The Court: The objection is overruled, defendant excepts.

[fol. 88] Mr. Evans:

Q. What was the statement he made?

A. The best I can remember he said, what are you going to give me for stealing you those cars?

Q. How many cars did he bring you?

A. Two.

Q. At that time?

A. Yes, sir.

Q. Did Mr. Powers, the then agent of the Midland Valley, did you have any conversation with him about furnishing you cars about that time?

A. It might have been a little later, or a little before.

Q. Right about that time?

A. Yes, sir.

Q. What did he say?

A. He said that he had orders not to furnish us anything but box cars.

Q. Mr. Pryor asked you about a fault in the mine; I wish you would explain to the jury what that fault was and all about it?

A. It ran along the east side of the mine.

Q. It did not butt up against it?

A. No, sir.

Q. Explain what the condition of it was?

A. The slope ran a little bit northwest and the fault almost north and south, it was on the east side of the slope. [fol. 89] The fault ran along the East side of the slope.

Q. Was there any prospect holes across the mine?

A. Yes, sir.

Q. How many?

A. Two.

Q. Do you know the condition or effect?

A. That was not in both of these holes.

Q. Practically of the same thickness?

A. Yes, sir, practically three or four feet, the same thickness of the vein of coal.

Q. That was good along the side of the fault, at the time you went there and bought in there?

A. Yes, sir.

Q. And you knew about the fault being in there?

A. Yes.

Q. What was the fault?

A. It is what you call a lap-over; the top vein laps over like this (indicating) part out here and drops down four or five feet, and then runs level again, that is a fault.

Q. That is called a fault?

A. Yes, sir; three or four feet.

Q. How long would it take to go through that fault; would it be very expensive work to go through a fault?

A. Yes, sir.

Q. You know the condition of the fault how long would it have taken you and your partner to go through it?

[fol. 90] A. I judge about a week.

Q. Just a sheer break of three or four feet?

A. Yes, and there is a substance that is not as hard as rock generally boney.

Q. Why haven't you already gone through that fault?

A. We were doing other work on the West side of the slope.

Q. You had plenty of coal?

A. Yes, sir.

Q. And plenty of development work to do?

A. Yes, sir.

Q. So this fault was not serious break or hindrance?

Objected to as leading and suggestive.

Q. Was it a serious break or hindrance?

A. We did not consider it so.

Mr. Pryor: You did not consider it very se-ious because you did not go through with it?

A. A man offered to take a contract to go through it for $100.

Q. Who was the man?

A. His name was Parker.

Q. Where does he live now?

A. I do not know where he is living now; don't know whether he is even living or not.

Q. When was the last time you saw him?

A. In the fall of 1923.

Q. He left the country after he made that proposition? [fol. 91] A. I do not know whether he did or not.

Q. He made a proposition to go through it for $100 but you had not made any drill holes to locate the coal?

A. No, sir.

Q. And you did not know whether he would have to go up or down?

A. I understood he would go through it for $100.

Q. At that time could you tell whether or not it would be necessary to go up or down?

A. I do not know, that would be a difference of opinion in men.

Q. You say you look at the broken part of the vein below?

A. You go by the roof formation.

Q. If that goes down you could not tell how deep you had to go?

A. No, sir.

Q. And you could not tell if you had to go up?

A. No, I don't think so.

Q. You did have one fellow make that offer but you do not know whether he is in the Asylum or not?

A. No, sir; I do not know where he is.

Q. When did you file your complaint before the Railroad Commission. Do you remember the month it was in?

A. No, sir; I do not.

Q. Do you remember whether it was before or after you had the conversation with Mr. Powers about furnishing cars, and Mr. Powers told you that he would *to* furnish you [fol. 92] box cars, that he was furnishing box cars for wagon load mines, he told you that?

A. Yes, he told me that.

Q. When was that?

A. I do not remember.

Q. I want to find out if that is the basis of your complaint? Mr. Powers told you that he could not furnish any more open top cars for wagon loading mines but would furnish you box cars, didn't he?

A. Yes, sir.

Q. Was that the cause of your filing a complaint before the Railroad Commission; did you file it after that or was it before that?

A. I do not remember whether it was before or not, but it was along close to that time.

Q. You do not remember whether it was before or after?
A. No, sir.
Q. He furnished you some cars soon after he came there?
A. Yes, sir.
Q. In August or September?
A. I think so, yes, sir.
Q. It was sometime after that that he told you about furnishing box cars for wagon loading mines?
A. Yes, sir.
Q. This fellow, this Grand Larceny Frank Pigg, that stole some cars for you, who was present when you had that conversation with Frank Pigg which you say you had?
[fol. 93] A. I am not sure but I believe my partner was there.
Q. Anybody else?
A. No, sir.
Q. You say he was pulling out, you mean the train was pulling out at the time?
A. Pulling away from me, from our switch, yes, sir.
Q. Was he in the train?
A. Yes, sir.
Q. You were on the ground?
A. Yes, sir; I was on the ground.
Q. How far away from him were you?
A. Fifteen or twenty steps.
Q. That is about forty-five or fifty feet?
A. Yes, sir.
Q. What was he on, the engine, box car, flat car, or what?
A. On the caboose.
Q. Was the train in motion?
A. Yes, sir.
Q. Running very fast?
A. No, sir; I guess a man could walk as fast as they were running at that time.
Q. It was not making much noise?
A. Not much, no, sir.
Q. He was 45 or 50 feet away and said how much are you going to give me for those cars I stole for you?
A. Something like that.
Q. Give his exact language, what did he say?
A. I believe that is what he said.
[fol. 94] Q. What?

A. What are you going to give me for stealing those cars for you?

Q. The train was pulling out at that time?

A. Yes, sir.

Q. Did he have his hands out behind his back that way (indicating)?

A. No, sir.

Q. Did he ask you when you were going to give it to him?

A. No, sir.

Q. He did not?

A. He did not. I just considered it a joke.

Q. That is what you know it was, a joke?

A. Yes, sir.

Q. This is the first time you ever testified that it was a joke? You were very serious about it at the last trial?

A. No, sir.

Q. Your partner did not consider it a joke when he stated it to the jury?

A. I do not know.

Q. Did you tell him he was only joking?

A. No, sir; I told him that he told me that.

Q. And you knew from the first time you heard it it was a joke?

A. I considered it that at the time, yes, sir.

Q. Didn't you testify before that he told you that Mr. LeFeber had given him the devil about it?

[fol. 95] A. No, sir.

Q. He did not tell you that?

A. No, sir.

Q. You heard Mr. Barkley swear it at the last trial?

A. Yes, sir.

Q. He swore that?

A. Yes, I think he did.

Q. You did not hear him make the statement?

A. No, sir; not to me.

Q. You say Mr. Barkley was present when he made that statement to you?

A. The best I remember he was, but I am not sure about it.

Q. You are not sure there was anybody there but you and Frank Pigg?

A. No, sir; I am not.

[fol. 96] Mr. THOMAS BARKLEY, one of the plaintiffs, being sworn, testified as follows:

Mr. Charley Evans:

Q. State your name?
A. Thomas Barkley.
Q. You are one of the plaintiffs in this case?
A. Yes, sir.
Q. When did you buy into the Fax Coal Company?
A. Right at the last of 1920, something near Christmas.
Q. How many were in at that time?
A. Four.
Q. Four?
A. Yes, four.
Q. What was the condition of the mine as it was developed at the time you bought in there?
A. It was not developed any except a little slope in there sixty feet I guess, between fifty and seventy feet. They had been digging a strip pit there made to strip coal; had worked some of the croppings out. It was not opened up right and we took and shot the roof and re-opened it and run down something like three or four hundred feet with the slope and also had to put in a pond there to hold the water off, the pond was about 12 feet wide and about 20 feet long, come out this way, here is the pond (making motions with his hands) all down this way, and here is a little hole (making motions with his hands) and you have [fol. 97] to go across that four ways with the tram, this had to be done to hold the water out of the mine. I cannot tell you all I did do there in both years, 1921 and 1922; we never did such work in 1922 as in 1921; I was not there in 1923, we had the mine ready to make a profit in 1922 on the coal if we could have any work.
Q. Why could you not have work?
A. Could not get cars. They come out on a strike the first of April and we did not want any cars then. We did not have contract when the strike was called until we got a contract to work and furnish coal to certain utility companies as has been testified to.

The letter referred to above is here introduced in evidence and marked Exhibit "A", in the former trial, and is here introduced as Exhibit "A", in this trial; also the

contract marked Exhibit "B", in the former trial is here marked Exhibit "B", and introduced in evidence in this trial.

The letter signed by C. C. Woodson marked Exhibit "A" was introduced by agreement as the testimony of C. C. Woodson, and the contract referred to and marked Exhibit "B", was introduced in evidence over the objections and exceptions of the defendant.

There was no objections raised as to the identification of Exhibit "B" but the same was objected to on the ground of incompetency, irrelevancy and immateriality, as to any of the issues in the case.

[fol. 98] Said Exhibits were read to the jury as follows:

EXHIBIT "A" TO TESTIMONY OF BARKLEY

C. C. Woodson, President; W. M. Pye, Vice President; G. R. Holbrook, Secy. and Treas.

Smokeless Fuel Company, Mines at Huntington and Montreal, Ark.; Actus Coal Company, Mines at Jenny Lind, Ark.

Mines and Shippers

Semi-anthracite Coal, Huntington, Arkansas

August 2, 1923.

Messrs. Alton Burnett & Tom Barclay, Midland, Ark.

GENTLEMEN: Referring to your letter of the 29th ulto. I have misplaced the lease or working contract between you and me under which you were working the mines near Excelsior, so cannot give you the exact terms of it. However, I will say that you had a contract giving you the right to work the coal under the N. W. ¼ of the N. E. ¼ of Section Eight Township 5, North of Range 31 West. This contract was made about April, 1920, and run for five years. You had the right under this contract to use all of the mine equipment I had there, the use of the railway switch, and you were to pay me a royalty of 40¢ per ton.

Trusting this is the information you want, I am

(Signed) C. C. Woodson.

[fol. 99] EXHIBIT "B" TO TESTIMONY OF BARKLEY

Tentative Agreement Between United Mine Workers of America, Dist. 21, and Fax Coal Company, Located at Midland, Arkansas

It is hereby agreed by and between the above named parties in the event a general suspension of mining is declared to take effect April 1st, 1922, that the above parties do agree to continue operation of the agreement expiring March 31, 1922, same to continue in full force and effect with all of the provisions contained in said contract being operative until such time as a new agreement may be negotiated by and between the United Mine Workers of America, District No. 21, and the Southwestern Coal Operators' Association and Oklahoma Coal Operators' Association, respectively, at which time it is further agreed:

That the provisions of the agreement so executed be the terms operative between the signatory parties to this agreement on and after the date and agreement between the Southwestern Coal Operators' Association and Oklahoma Coal Operators' Association and United Mine Workers of America, District 21, respectively, shall become effective.

(Signed) A. Barnett, in Behalf of the Fax Coal Company. Pete Coffman, in Behalf of Dist. 21, U. M. W. of America.

Date May 1, 1922.

The following was the penceled notation on the face of the above contract:

[fol. 100] It is understood and agreed that coal produced under this agreement will only be marketed to public utilities, ice plants and coal storage, electric light plants, hospitals, schools, sanitariums.

[fol. 101] Mr. Evans:

Q. This contract that you refer to was signed by the United Mine Workers of America and the Fax Coal Company?

A. Yes, sir.

Q. That is the contract you all were operating under?
A. Yes, that is part of it.
Q. Now did you begin to operate under it, during the strike?
A. Yes, sir.
Q. It was dated May First, 1922?
A. August 15th, we had authority under that.
Q. The strike was called April First?
A. Yes, sir.
Q. This contract is dated May First, 1922?
A. Yes, sir.
Q. You were stating to the jury the development work in 1921, what work you had done was in the spring of 1922? State to the jury the state of the development; how far you had developed the mine up until June, 1922?
A. Up until June, 1922, it was something around four hundred feet around in there.
Q. The main slope?
A. Yes, sir. But when we were shut down and up until we left there we were not working on the main slope, but was in this cut off; both drove down through that during the strike when we broke through to that and pumped the [fol. 102] water out of it; and the men owned it, or Mr. Jack Monroe said there was eight pit cars in there and two rails and we could have them.

The defendant objects.

Mr. Evans: We do not insist that that is material.

Q. How many men were working in the mine in June, 1922?
A. We usually ran from eight to nine and half.
Q. How did you get that?
A. A kid, we called him a half; but he is not able to make a turn in the mine, but his father helped in there and we let him make a half turn.
Q. How much coal were you able to put out?
A. We were putting out forty-five tons a day.
Q. Was that a car?
A. Yes, sir; we run from thirty ton up.
Q. About what is the maximum?
A. I suppose to about forty or fifty.

Q. You were putting out about forty-five ton a day?

A. Yes, we did when we were running.

Q. How many entries had you turning off your main slope?

A. We had one off the main slope with three rooms I think. We had rooms turning off the main slope but *but* we were working in this place, as I stated a while ago, plum up until we left; and in our work when we left, in thos- little cut off the main slope through towards this other little mine had seven or eight rooms in there.

[fol. 103] Q. What was the condition of this fault in the mine.

A. It was between from ten feet to forty feet from the slope.

Q. Did you work in the main slope in June and July along there or not?

A. No, sir; we had driven it as far as we wanted it. We had it way down where we wanted it.

Q. You were working out this little cut off?

A. We were probably out $15 or $20 running in there. That was thrown off and we broke down that to go through the fault.

Q. Did you know that condition when you went in there?

A. Yes, sir; I knew the fault was there when we went there and worked up to it; it was developed a very little more when these others went in.

Q. Do you know Floyd Tyler?

A. Yes, sir.

Q. Who was he and what was he?

A. He was the Agent at Excelsior.

Q. Agent of what?

A. The Midland Valley Railroad Company.

Q. The Agent of the Midland Valley Railroad Company at Excelsior, Arkansas?

A. Yes, sir.

Q. In charge of its business there?

A. Yes, I guess so.

Q. Was he? You saw him?

[fol. 104] A. Yes, he said he was.

Q. Was there anybody else there that had charge of it?

A. No, sir.

Q. Did he come to your mine at any time?

A. Yes, sir.

Q. State to the jury what you know about his trip to your mine, and what took place?

A. He come there the 22nd day of June.

Q. What year?

A. 1922.

Q. Alright go ahead and tell what took place?

A. I guess about ten o'clock in the morning and wanted to buy our coal. I was in the pit when he first come and my partner sent in for me to come out and he made his proposition to us about taking the coal under his price and said he was paying $3.55, and we stated to him that we could not sell it to him that we had a written contract, and would have to break a written contract in order to let him have the coal, and if we did that it would not do him any good or us either; and he kept on talking and stayed probably 20 or 30 minutes and finally said, we would have to let him have it; he said, you figure on your mine running at $3.55 or figure on it being shut down, regardless of the price of coal.

Q. Figure on your mine running at $3.55 or figure on your mine being shut down regardless of price?

[fol. 105] A. Yes, sir; and I told him that I felt like that was wrong to break a written contract to let him have the coal.

Q. You felt like that would be wrong?

A. I sure did; and I have not changed yet.

Q. Then he said that he could sure shut you down, and they sure did shut you down?

A. I sure believe they did.

Q. What further remarks did he make?

A. That is about all I recollect; all on regards to the coal. He did not stay very long. When he got up to me these were the last words he said, that he was going to shut us down.

Q. That is the last thing he said to you?

A. Yes, sir.

Q. That he was going to shut you down?

A. Yes, and I told him we could not help it.

Q. Was there anybody there with you?

A. Yes, sir.

Q. Who.

A. Mr. Fitzjerald, and my partner, Mr. Barnett and Mr. Pate, he was riding, he was the rope rider, he comes out and goes back on the rope, he probably didn't stay there very long.

Q. Was Mr. Fitzjerald there when you arrived on the scene?

A. Yes, sir.

Q. He was there?

[fol. 106] A. Yes, sir.

Q. He and Mr. Floyd Tyler and your partner?

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. Was present when this conversation took place?

A. Yes, sir; he was there; I do not know whether he was right near to us at the time, but he walked around us.

Q. Was he within hearing distance of you?

A. Well, I don't know whether he could have heard all of it or not, but he was part of the time I know. He did not seem like he was trying to hear it, he walked around part of the time.

Q. Did you have any cars on the track at that time?

A. Yes, we were loading a car; we loaded a car that day and had another one sitting there?

Q. Did you load it the next day?

A. No, sir.

Q. You did not?

A. He went back to Excelsior and when the train came on the Midland Calley arrived, coming through by Hartford——

Q. That day?

A. Yes, sir.

Q. And pulled the empty car that afternoon?

A. Yes, sir.

[fol. 107] Q. Did they furnish you any more cars after that?

A. Yes, we got a few after that.

Q. When?

A. I have not got the date.

Q. About how many?

A. Two or three.

Q. A few in each month up to September?

A. Yes, sir; now and then.

Q. After Mr. Powers came there did he furnish you any cars?

A. As I remember it, he had six cars set when he first came there, and we worked six days right pretty close together, then he cut us out.

Q. He did what?

A. We did not get any more. We could have gotten two or three more after that; I do not recollect the date he come there. I think it was after August. He was not there in August.

Q. When he came there he set you six cars right straight along?

A. Yes, sir; I believe all in one day—all six.

Q. Then he began to let up on it?

A. Yes, sir.

Q. Did you ever have any conversation with him about it?

A. Yes, sir.

Q. What was Mr. Powers?

A. Agent.

Q. Agent of what?

[fol. 108] A. At Excelsior.

Q. Of the Midland Valley Railroad Company?

A. Yes, sir.

Q. At Excelsior, then?

A. Yes, sir.

Q. What did he say about it?

A. He said he could not set us cars because they had ordered him not to.

He stated that he could not set you cars because they had ordered him not to?

A. Yes, sir.

Q. Did he tell you who ordered him not to, or do you remember?

A. I do not remember.

Q. He stated that he had been ordered not to set cars?

A. Yes sir.

Q. That is the substance of it?

A. Yes, sir. No coal cars but he said at last that they would give us some box cars.

Q. Could you handle your coal in box cars?

A. No, sir.

Q. Could you sell it?

A. No, sir. We tried every one we knew and they could not handle it.

Q. To see if they would take it in box cars?

A. Yes, sir.

Q. If they would have taken it in box cars you would have loaded them?

[fol. 109] A. Yes, sir. We offered to take our share of box cars but we could not sell our coal and we would throw our mine idle without any complaint for the time loading box cars.

Q. You offered to take your share of box cars by throwing your mine idle during the time it would take you to load the box cars?

A. Yes, sir; and I went over there twice and talked to Mr. Powers.

Q. What did he tell you each time?

A. The last time I went over there and explained my condition to him that it would cost us our mine any anyway had done like I explained it to the jury, and I said I did not feel like it was right and he said he would wire the information to Mr. LeFeber.

Q. Who is Mr. LeFeber?

A. I think he was the general manager at that time; I do not know, but he had some authority over him, some high official on the Midland Valley.

Q. He stated that he would wire that information to him?

A. Yes, sir.

Q. Did you still get any cars?

A. No, sir.

Q. You got no cars even after that?

A. No, sir.

Q. Did you see him any more after that?

A. Yes, I saw him quite a few times, but I do not recollect bringing this up but twice.

[fol. 110] Q. Did you see him any more after that conversation?

A. That is after the last conversation?

Q. Was he to report to you the result?

A. No, sir; he did not say whether he would or not.

Q. He never did report to you?

A. No, sir.

Q. And he never furnished you any cars?

A. No, sir.

Q. That is after that you did not get any cars?

A. No, sir.

Q. They refused to furnish you any cars?

A. Yes, sir.

Q. What did Mr. Powers say when you offered to take your proportion of box cars?

A. I do not know what he said to tell you the truth.

Q. Do you not remember?

A. No, I do not; that was all of this conversation and he said he would wire the information to Mr. LeFeber?

Q. You had been up there and talked with him and told him your condition; and about the work you had put in the mine?

A. Yes, sir.

Q. And your situation as it appeared from your standpoint?

A. Yes, sir.

Q. And you never heard any more about it?

A. No, sir.

Q. And you never got any more cars?

[fol. 111] A. No, sir.

Q. Mr. W. C. Caudle here in Greenwood was your agent?

A. Yes, sir; he was handling our coal.

Q. Was he your agent throughout the time you and Mr. Burnett were operating the mine, during all the time?

A. Not all the time.

Q. But he was during this period?

A. Yes, sir.

Q. He had the sales of the coal?

A. Under certain circumstances.

Q. Did you authorize and direct him to order cars for your mine?

A. Yes, sir.

Q. Tell the jury what the arrangements were between you and Mr. Caudle about how he should order cars?

A. We would phone to him every evening our order for cars, and he stated he would order them.

Q. When you loaded a car you phoned and got the bill of lading and billed it out?

A. Yes, sir.

Q. Where was Mr. Caudle located?

A. Here in Greenwood.

Q. Do you know how many cars they furnished you when Mr. Tyler was there?

A. No, sir.

Q. Mr. Caudle's record will show that?

A. Yes, sir.

[fol. 112] Q. He sold all the coal that you put in the cars after that time?

A. Yes, sir.

Q. So that his records should and will show that?

A. Yes, sir.

Q. Did you have the records he kept?

A. We did.

Q. Do you know what happened to them?

A. He stated that he got them all wet and they were not readable and I do not know what he did with them.

Q. You could not read what was in the records?

A. No, sir.

Q. Were they written with a pencil or pen and ink?

A. With a pen I believe.

Q. Anyhow they were not readable?

A. I did not look over it much any way. He was supposed to do that.

Q. Do you know what profit during June and July you would make out of a car of coal say 45 tons?

A. It would make different profits.

Q. What was the average profit during that time?

A. I would have to guess.

Q. Just the average.

Mr. Pryor: He said he would have to guess, we object.

The Court: He cannot guess. The court will allow him to give his best judgment.

The defendant saved an exception.

[fol. 113] Mr. Evans:

Q. Give what you remember to be the approximate profit.

A. It seems to me that you could get the exact figures on that. It cost $2.80 a ton to put it on the cars and take that

from the price that it sold for and that would give the exact profit.

Q. You say you know what it cost to produce coal?

A. Yes, sir.

Q. What is that?

A. $2.80.

Q. $2.80 a ton?

A. Yes, sir.

Q. That was the average cost to put it on the car?

A. Yes, sir.

Q. What was the average price during that period?

A. From the 22nd day of June to the first of the year?

Q. Yes, sir.

A. The average price?

Q. Average it up?

A. It would run something like $5.00, take it all the way through, it would run from $4.00 to $6.50.

Q. The average all the way through would be $5.00 a ton?

A. Yes, sir.

Q. During that period?

A. Yes, I believe it would; we had to load different kinds of coal to make it come out more per ton. Lots of time we loaded lump and slack.

[fol. 114] Q. Mr. Caudle would keep you advised of the condition of the market?

A. Yes, sir.

Q. Would you load it and handle it so as to bring the most to yourself?

A. Yes, sir; we loaded out any kind he wanted that he would issue orders for.

Q. How much could you have loaded a day if you had had cars?

A. We could have loaded forty-five tons a day, and could have increased that. We had a four hundred foot opening there and we were loading forty-five tons a day. I could not tell what we could have done. I know we could have loaded that.

Q. You were developing the mine along as you were mining the coal?

A. Yes, we would have developed some more probably. We might not all the way because we had our mine slope in quite a long ways and a right smart of work opened up.

When we begin to get less for slack and stuff. We would have to fire up out there and go out there at two and three o'clock in the morning to get in there at 7:30 after you get down a hundred or two hundred feet, you can sink holes for the water in the opening for the water then you don't have to fire——

(Reporter. The reporter didn't understand the witness and asked the *q*itness a question for information.)

The defendant objected and excepted to this action of the [fol. 115] reporter.

The plaintiffs also objected and excepted to this action of the reporter; and the reporter did not receive the information.

Mr. Evans:

Q. You state that your mine was developed to the place where you could mine at least a car of coal a day, and put out a car of coal a day?

A. Yes, sir.

Q. At the time you were shut down by Mr. Tyler?

A. Yes, sir.

Q. Would you say you could have mined as much as twenty cars each calendar month from June on?

Defendant objects to that question, as well as the preceding question and answer.

The objection was sustained and question was withdrawn.

Q. How much—how many cars of coal could you have produced for each calendar month of July, August and September, October, November, and December in the year of 1922?

A. We could have loaded a car a day. Just as I said forty-five tons a day.

Q. How was the demand at that time?

A. The demand was good for selling all the coal. The coal was higher during those months.

Q. How was the price the first of 1923, per ton, if you know.

A. Before 1922?

[fol. 116] Q. Yes.

A. It was something like about the same all along up until in June and July; it commenced to go up in the last of June and July, and coal got scarce and we had a strike.

Q. Do you know how long the price continued to raise?

A. It went up until in August; it went up as high as $6.50, I believe we received $6.25 for one car.

Q. How long did you maintain that delivery?

A. It never stayed up that way any longer than August, that hight, it was low. I do not know that it stayed up that way all during August.

Q. Mr. Caudle's record will probably show the market price during that time?

A. Yes, sir.

Q. These six cars handled in succession sold on an average of $5.00 a ton?

A. That is the way I figured and $7.50 for lump; $2.50 for slack; coal was running 50%; say the two came to $10.00 and mine run was $4.00.

Q. When you could not get cars what did you do?

A. Stayed there and kept the mine in working order; up until the time we left.

Q. When did you leave?

A. We could not get any cars and could not make anything and stayed as long as we could.

Q. What time did you sell out?

A. Something near the first of the year of 1923; I do [fol. 117] not remember the date.

Q. Do you know when they furnished you the last car?

A. No, sir; I cannot state.

Q. Refresh your memory, I will ask you if they furnished you any cars during the month of October before these six you had last?

A. I will not say positively.

Q. What work did you do towards keeping the mine in shape?

A. After we could not get cars?

Q. Yes, sir.

A. It did not take all our time to keep the mine in shape for work. Did not have anything to do but pump the water out and maybe a little fall of rock to clean up to be ready to load.

Q. Did you do anything else during that time?

A. No, sir.

Q. You just looked after the mine?

A. Yes, sir.

Q. You kept it in shape during all this time?

A. Yes, sir.

Q. What else did you do. You stated you went to see Mr. Powers on two occasions; please state to the jury what else you did, if anything, to try to get cars for your mine? Did you go to see Mr. Caudle?

A. Yes, sir; I saw him at different times.

Q. Were you present when he called headquarters of the Midland Valley at Muskogee?

A. No, sir; I do not recollect it if I was.

[fol. 118] Q. Who else did you see about it?

A. That is about all I know except to ask the railroad commission to get him to set us cars; we had Mr. Grant to take it up with the railroad commission to see if he could get them to set cars for us.

Q. After you took it up with the Railroad Commission did you get them to set any cars?

A. No, sir; we never did.

Q. You did not get any cars?

A. No, sir.

Q. Were you present at the time that Frank Pigg set two cars and made a statement to Mr. Burnett?

A. Yes, I was about that place.

Q. What did he say?

A. When I went down there they had parked cars in there; set two back out on the switch, and he was coming along down going towards the platform and he just asked Mr. Burnett, I believe he said, "Burnett, what are you going to give me for those cars I stole and set in there for you?

Q. "Burnett, what are you going to give me for those cars I stole and set in there for you?"

A. Yes, sir.

Q. That was Frank Pigg, the conductor?

A. Yes, sir.

Q. Was there any one else present at that conversation so far as you can remember?

A. When he set in these two cars?

[fol. 119] A. Yes, sir.

Q. I do not know that there was.

July 7th, 1925.

Mr. Charley Evans:

Q. When Mr. Taylor came to your mine and wanted the coal for the Midland Valley you explained to him, or your partner explained to him——

Mr. Pryor: We object to that. He said when Mr. Tyler came to you he wanted the coal for the Midland Valley, the witness testified that Mr. Tyler stated he wanted it for the Muskogee Ice and Fuel Company, his partner testified to that.

Mr. Evans:

Q. When Mr. Tyler came to your mine who did he say that he wanted the coal for?

A. Well, he said he wanted the coal at a certain price and went ahead and stated how they would pay.

Q. Who?

A. He said that.

Q. How would he pay?

A. Every 15th and 1st, in full up to date.

Q. Alright. Did you explain to him the terms of the contract you had with the United Mine Workers of America?

A. Yes, sir.

Q. What did he say then?

A. He went ahead and along at the last said no investi-
[fol. 120] gation would be made as to where the coal was going, and if we would give it to him he would tell them it was being billed out to the Ice Plant at Muskogee.

Q. State that again?

A. He said if they investigated where the coal was going to they would tell them it was going to the Muskogee Ice Plant; and I told him that I could not do that.

Q. What was the last thing Mr. Tyler said when he left?

A. He said he was going to shut us down.

Q. Mr. Barkley, you stated yesterday the condition of the lease at the time you went in there; tell some of the development work you did. I wish you would please state to the jury whether or not you had any money when you went in there and extended any money in addition to your labor?

Mr. Pryor: We object to that as it is suggestive and calls for a conclusion.

The Court: The objection is overruled.

The defendant saved an exception.

Witness: You mean when I first took the mine?

Mr. Evans: Yes, sir.

A. Yes, I started between $12 and $14 hundred dollars; I started there with my labor and got $2.50 and stayed there and mortgaged my home for money and lost that.

Mr. Pryor: We object to that, about mortgaging his home for money and spending that.

The Court: It is immaterial how he got it.

[fol. 121] Mr. Charley Evans:

Q. Besides the money you had saved and the money you had borrowed did you spend anything else—any other expenditures?

A. I left there eight hundred dollars in debt to the grocery man and the merchants in Midland.

Mr. Pryor: We object to that about his leaving there in debt eight hundred dollars to the grocery man and merchants; that is immaterial.

The Court: That is immaterial and the objection is sustained. The plaintiff saved an exception.

Mr. Charley Evans:

Q. Mr. Barkley, after Mr. Powers went to Excelsior as Agent of the Midland Valley you stated yesterday that he furnished you six cars in succession?

A. Yes, sir.

Q. And you loaded them and sold the coal?

A. Yes, sir.

Q. Please state to the jury, what was the net profit that you made on these six cars?

A. $620.00.

Q. $620.00?

A. Yes, sir.

Q. That is the net profit you received on that coal on the six cars?

A. Yes, sir.

Q. You remember what month that was in?
A. It was along close to September as I recollect.
[fol. 122] Q. September as well as you recollect?
A. Yes, sir.
Q. You got these six cars all in one day?
A. We called it first half and last half.

Cross-examination.

Mr. Pryor:

Q. You testified in this case at the last term of court?
A. Yes, sir.
Q. I will ask you if you did not testify at that that after Mr. Powers took charge of the station at Excelsior as agent he treated you like a gentleman?
A. He talked to me always, yes, sir.
Q. Every time you talked to him?
A. Yes, sir.
Q. What was you statement about his treating you like a gentleman?
A. I am not for sure; I would not deny saying it.
Q. You do not know?
A. It did not do any wrong to the person that I know of.
Q. You received these six cars in two weeks and got these from Mr. Powers?
A. Yes, sir.
Q. When did he take charge as agent at Excelsior?
A. It was something near September 21st.
Q. Was it in August?
[fol. 123] A. I am pretty sure it was, yes, sir.
Q. Pretty sure it was?
A. Yes, sir.
Q. When was it that you had in this conversation you just detailed with Mr. Tyler?
A. Along something like November.
Q. With Floyd Tyler?
A. That was the 22nd day of June.
Q. The 22nd day of June?
A. Yes, sir.
Q. How do you figure that date?
A. What?

Q. How do you know it was the 22nd of June that you had the conversation with Floyd Tyler?

A. I have the date.

Q. Did you make a memorandum of it at the time?

A. Nothing. Just my mind I knew the date.

Q. You made a memorandum in your mind?

A. Yes, I know what the date was when he called there.

Q. Up until June 22nd, you received cars did you?

A. Some. Had not wanted any cars to amount to anything.

Q. You had not wanted cars to amount to anything?

A. No, sir.

Q. That was June 22nd that you had this conversation with Mr. Tyler?

A. Yes, sir.

Q. But it was in September that Mr. Powers took charge as agent you say?

[fol. 124] It was that late, but I will not say what date.

Q. You were without cars two months?

A. We were without cars from June 22nd.

Q. Did you receive any cars at all from June 22nd to the first of September?

A. Yes, sir.

Q. How many? You say you did not want any before June 22nd?

A. On certain days we did not.

Q. How many cars did you receive from June 22nd, after you say you had the conversation with Mr. Floyd Tyler up until Mr. Powers took charge in September?

A. I do not know how many; we did not get a car but now and then.

Q. Can you give the jury an idea how many you got during that time?

A. I would have to kind of guess at it, that is all I can do.

Q. You could not approximate it then?

A. From June 22nd until——

Q. Until Mr. Powers took charge; when you say he treated you alright?

A. About something like probably eight or ten cars.

Q. Open top cars or box cars?

A. Open top cars.

Q. After you had the conversation with Mr. Tyler he did furnish you eight or ten cars during that period?

A. Yes, he was still agent, he furnished them. We were [fol. 125] ordering cars through Mr. Caudle and Mr. Caudle ordered them and when he set them in we loaded them.

Q. After you say you had the conversation with Mr. Tyler in June, after June 22nd, were you furnished any more cars during the month of June?

A. I believe I was; one or two more.

Q. You believe you ordered one or two more?

A. We did that.

Q. Was that all you ordered?

A. No, we ordered all the time.

Q. How do you know? Did you order them yourself?

A. Not every day, no, sir.

Q. How do you know they were ordered?

A. Mr. Caudle was ordering them.

Q. You were relying on Mr. Caudle?

A. To order cars, yes, sir.

Q. You did not order any yourself?

A. Yes, I went and talked to them as I said yesterday.

Q. Who did you talk to?

A. After June 22nd, to Mr. Powers.

Q. You said he did not come there until September, who did you talk with between June 22nd and September?

A. I do not recollect when he went in as agent over there.

Q. You never asked for any cars?

A. Yes, I asked for cars.

[fol. 126] Q. Who did you ask?

A. I ordered cars personally myself at Midland from Mr. DeShong.

Q. Wasn't it customary to order from Excelsior?

A. He said he ordered through Excelsior.

Q. How many cars did you order from June 22nd?

A. I do not know.

Q. Through the agent at Midland?

A. I was not ordering daily.

Q. Was your order at Midland written or verbal?

A. Just verbal.

Q. How many times did you order? Who was the agent there?

A. Mr. DeShong.

Q. How many times did you order cars from him?

A. Four or five.

Q. When did you order cars?

A. Between those dates; I do not know any certain dates.

Q. You say between what dates?

A. I was phoning Mr. Caudle every night; and he said he was ordering cars at that time.

Q. You were both ordering cars at the same time?

A. No, sir; not at the same time. He was ordering them all the time and I was talking to him now and then.

Q. Do you know how many cars Mr. Caudle ordered?

A. No, sir.

Q. You do not know personally whether he ordered any or not?

[fol. 127] A. No, I never saw him order them.

Q. And you did not hear him?

A. I was not here.

Q. So far as you know personally there was no cars ordered?

A. Yes, I know there were cars ordered.

Q. How many and when if you know personally?

A. I stated I did not order them over four or five times that I recollect.

Q. Who did you order from, DeShong?

A. DeShong and Mr. Powers.

Q. Before Mr. Powers was sent there from June 22nd, until Mr. Powers came in September from whom did you personally order cars?

A. From DeShong.

Q. Were the cars ordered from DeShong written or verbal?

A. Verbal.

Q. How many cars did you order from DeShong and give the dates?

A. I cannot do it; I do not remember them.

Q. You cannot do that?

A. No, sir.

Q. Don't you know how many you ordered?

A. I said four or five times I ordered.

Q. How many cars did you order at a time?

A. I would order sometimes one and sometimes two.

Q. How was that?

A. I ordered cars, sometimes one and sometimes two; [fol. 128] owing to what kind of coal we were going to load.

Q. You state your orders for DeShong were just verbal orders. Did you go to Midland Station and order them from him?

A. Went there to the agent at Midland.

Q. When did you first go to DeShong? Is he the agent there now?

A. No, sir; I do not think so. I do not live there.

Q. Do you remember the date alright? You remember June 22nd you had a conversation with Mr. Tyler?

A. Yes, sir.

Q. Wasn't it equally as important and didn't you regard it as important when you ordered cars from Mr. DeShong?

A. No, sir; I did not.

Q. You did not regard that as important?

A. I did not give any date, no, sir.

Q. Was it before or after you had the conversation with Mr. Tyler?

A. It was after. I had been getting cars up to that date.

Q. Up to June 22nd?

A. Some cars, yes, sir.

Q. How long was it afterwards before you went to Mr. Deshong?

A. I do not know, probably a week or two, or two or three weeks.

Q. What did you say to Mr. DeShong?

A. I asked him if he would set us some cars over there.

Q. You say you ordered cars, how did you order them?

[fol. 129] A. I told him I wanted cars and he said he would order them through Excelsior.

Q. He said he would order them through Excelsior?

A. Yes, sir.

Q. What did he say the other three or four times?

A. He said he did not — such places like us any cars.

Q. Did that conversation occur in July?

A. I do not know.

Q. How long wss DeShong there as agent for the Midland Valley, if you know?

A. I do not know.

Q. You say up until June 22nd, you received cars; and you ordered from DeShong after that, can you tell the jury how long after that time was it you ordered cars from DeShong?

A. No, sir; I did not order them from him over four or five times; I did not think it necessary; Mr. Caudle was telling me he was ordering all the time.

Q. Can you tell the jury whether it was in July that you ordered them?

A. Probably one time I was up there; I did not go four times right straight along; it was at different dates.

Q. I am trying to get you to give the month you ordered them from DeShong?

A. It was between June 22nd and September.

Q. You cannot state to the jury whether it was July or August, or whether it was the latter part of June?

A. I am sure we ordered as much as once from him in August.

[fol. 130] Q. You ordered once in August from Mr. DeShong?

A. I do not know that date.

Q. You are certain it was in August, 1922, that you ordered them?

A. As much as one time I would be sure of that, I believe. I will not say all four times was in August.

Q. Once in August, was the other three or four times in September or July?

A. I do not know.

Q. When did you get these six cars, in September or was it the first part or last part of September?

A. I do not recall when it wqs; I think about the first, somewhere along there.

Q. You say you made $620 profit on these six cars?

A. Yes, sir.

Q. What did it cost you to produce the coal?

A. It cost us $2.80 a ton.

Q. What did the $2.80 a ton consist of?

A. It was for time when we were out producing the coal.

Q. That is what I want to get at; you paid $1.15 to the miners?

A. Yes, sir.

Q. You paid 40¢ a ton royalty under that contract?

A. Yes, sir.

Q. You paid 50¢ for hauling?

A. Yes, sir.

Q. What else did you pay?

A. I believe we figured our company work was 40¢ a ton.

[fol. 131] Q. Development and everything at 40¢ a ton?

A. Yes, sir.

Q. Company work 40¢ a ton?

A. Yes, sir.

Q. How much was the development work?

A. About two bits a ton, I believe we figured it out at that.

Q. At what?

A. We had it done, I believe that is the way it was separately 40 cents for company work and two bits for dead work.

Q. How much did you pay Mr. Caudle per ton?

A. He charged 6%. He can state that himself.

Q. You heard your partner's testimony yesterday, Mr. Burnett's that the minimum rate was 25¢ a ton?

A. He said that he charged 6%.

Q. That is the maximum but the minimum was 25¢?

A. I believe I heard Mr. Caudle say that.

Q. Do you state then that you do not know what commission you were paying Caudle?

A. I did not see his figures.

Q. You never saw any of his figures?

A. I saw some of them.

Q. You do not know what he charged you for his commission?

A. 6% for those I saw.

Q. How many did you see?

A. I saw some of his figures that he sold for $8.00; and once paid us $7.52.

Q. How much did he charge you commission?

[fol. 132] A. 6%.

Q. That is 45¢ and 48¢ a ton he charged you?

A. Whatever it figures out.

Q. You say you figured the development work at 25¢ a ton?

A. Yes, sir.

Q. Do you mean to tell the jury that is what you figured going in there and opening up the mine; that is the money you think that you spent that would only amount to 25¢ a ton?

A. No, sir; not that at that time.

Q. That is not the entire cost of the development?

A. The cost of the development I would not know the amount.

Q. The money you had spent in developing the mine you left that out?

A. Just stating what it cost us.

Q. But you had spent money in developing it?

A. Yes, sir.

Q. Then, you do not know what the coal actually cost you to produce it?

A. I never figured it out.

Q. That is a pretty big item in the mine?

A. Yes, sir.

Q. Were you present when Mr. Burnett had a conversation with Mr. Tyler?

A. I was one time.

Q. There never was but one conversation with Mr. Tyler [fol. 133] with reference to furnish- cars was there?

A. Not as I ever heard.

Q. I will ask you if he did not tell you and Mr. Burnett at that time that he would buy the coal for the Muskogee Ice and Fuel Company?

A. No, sir; he made the statement as I said a while ago.

Q. He did not make a statement that Mr. Burnett made on the stand here that he would buy it for the Muskogee Ice and Fuel Company?

A. That was my statement; like I said it.

Q. How did you state it?

A. I said we could not sell the coal to him at all; and he knew the kind of contract we had and he was acquainted with it as well as I was.

Mr. Pryor:

Q. Who had actual charge of the operation of your mine?

A. Me and Mr. Barnett.

Q. Who entered into the contract with the United Mine Workers of America, District 21?

A. The United Mine Workers.

Q. The contract was introduced in evidence?

A. Yes, sir.

Q. You have seen it?

A. Yes, sir.

Q. It was signed by Burnett?

A. Yes, sir.

Q. On behalf of the Fax Coal Company?

A. Yes, sir.

[fol. 134] Q. Who wrote the pencil memorandum?

A. Pete Caughman.

Q. Did you see him write it?

A. Yes, sir.

Q. That is in his handwriting?

A. Yes, sir.

Q. You saw him write it?

A. Yes, sitting right by him.

Q. Here is the pencil memorandum on the contract: "It is understood and agreed that coal produced under this agreement will only be marketed to public utilities ice plants and cold storage electric light plants hospitals schools sanitariums."; you say you saw him write that?

A. Yes, sir.

Q. You did not sign it yourself?

A. No, sir; Mr. Burnett signed it and I said that was sufficient.

Q. Then, you were not permitted under the contract to sell coal at all to a railroad company?

A. No, sir.

Q. You were permitted to sell coal to the Muskogee Ice and Fuel Company?

A. Yes, sir; and ice plants.

Q. Did you know at that time where the Midland Valley Railroad Company was receiving its supply of coal for fuel purposes?

A. No, sir.

Q. You don't know whether they would get coal or not?

[fol. 135] A. No, sir; I did not know.

Q. You knew it was necessary for a railroad company to have coal to operate its trains?

A. Yes, some of them.

Q. Going back to this contract, you say you testified in this case before?

A. Yes, sir.

Q. You say you saw Pete Caughman write this notation on this contract?

A. I think I did, yes, sir.

Q. How?

A. Yes, sir; I believe I saw him write it.

Q. You know whether you saw him write it or not?

A. He was out there at the mine with the contract, yes, sir.

Q. I did not ask you that. Did you see him write that on there?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Do you remember testifying on that point at the last trial of the case?

A. No, sir.

Q. I will ask you if at the last trial you were asked this question:

"(Q.) Whose writing is that?
(A.) Pete Caughman's.
(Q.) Do you know him?
(A.) No, sir, I do not know him."

[fol. 136] A. No, sir; I do not recollect answering that way for I know Pete Caughman.

Q. You know him?

A. Yes, sir.

Q. I will ask you if at the last trial you were asked this question:

(Q.) Did he sign his name here; is this writing here? (indicating) and you made the following answer:
"(A.) I guess he did, he wrote it."

A. I remember that.

Q. Were you further asked at the former trial:

"(Q.) Did he sign his name there?" (Indicating.)
(A.) Yes, I guess so.
(Q.) Is that in his handwriting?

(A.) I do not know.

(Q.) Did you see him write that? Did he sign his name?

(A.) He signed his name I suppose.

(Q.) Is that in the same handwriting?

(A.) I do not know.

(Q.) Does it look like it?

(A.) It looks something like it."

State wasn't that your testimony at the trial before?

A. I do not recollect what it was.

Q. You do not recollect what it was you said at the last trial?

A. Not all of it, word for word.

Q. On a question of this sort would you remember it or not. I want to ask you if this was your testimony on the [fol. 137] last trial of this case or not?

A. Was it my testimony at the last trial?

Q. Did you testify as I have read to you the transcript of your testimony at the last trial of this case?

A. I do not recollect whether it was or not; I do not recollect.

Q. You do not recollect?

A. No, sir; I cannot recollect everything I said at the last trial.

Q. I wanted to know whether you stated you knew Pete Caughman or not?

A. No, sir.

Mr. Evans: He repeatedly states that he did not remember whether he testified that word for word or not, and it seems to me that he has answered that sufficiently.

Mr. Pryor: Do you not appreciate my purpose in reading these questions and answers and trying to get a positive answer from the witness so I can introduce the reporter to show that that was his testimony given at the former trial. He stated he did not remember; and don't recollect and doesn't recall.

Mr. Evans: I do not agree with counsel with reference to introducing the record; witness states he did not remember whether that was his testimony or not word for word. Now how in the world can this court or Mr. Pryor make a witness remember his testimony word for word? It seems to me he has answered sufficiently.

[fol. 138] Mr. Pryor:

Q. I will change the question. Do you state now that you did not testify as I read to you from the transcript of your testimony at the last trial of this case?

A. That I did not testify that way?

Q. Yes, sir.

A. No, sir; I do not recollect whether I stated it out like that or not; I cannot testify anyway to that word for word.

Q. I did not ask you to state it word for word. Did you testify as I have read it to you? I will read it to you again; did you state at the last trial?

(Q.) Do you know him?

(A.) No, sir, I do not know him.

Q. You did not testify that way at the last trial of this case?

A. That I did not know him?

Q. I will read it again:

(Q.) Do you know him? and you answered:

(A.) No, sir, I do not know him.

Did you test-y that at the last trial?

A. No, sir; I do not recollect testifying that.

Q. If you testify that was it true or not?

A. I know Pete Caughman, yes, sir.

Q. At the last term of court didn't you testify that you did not know him?

Mr. Evans: I submit that the witness has answered the question fully.

The Court: I think you have asked him fully.

[fol. 139] Mr. Pryor: Does the court hold that I have laid a sufficient foundation to introduce the reporter?

The Court: Yes, sir.

Mr. Pryor:

Q. Al- right. When did you become interested in that mine?

A. In 1920.

Q. What month?

A. December.

Q. From whom did you purchase the mine?
A. I went in as a fourth share with three others.
Q. You went in as a fourth share?
A. Yes, sir.
Q. From whom did you purchase your share?
A. I bought out a fellow by the name of Hammonds, took his share.
Q. How much did you pay him?
A. I paid him $50 for his rights.
Q. Were the other three partners in there at the time you bought it?
A. They were in there.
Q. Who were the other three?
A. Three Hammonds'.
Q. You bought out one for $50?
A. Yes, sir.
Q. In December, 1920?
A. Yes, sir.
Q. What became of the Hammonds' interest in the mine?
[fol. 140] A. They sold out and left.
Q. When did they sell?
A. Along in the last of March, I believe, that was in 1921 then.
Q. In March, 1921?
A. Yes, sir, or the first of April.
Q. Did all three sell at once?
A. Two of them.
Q. Who did they sell to?
A. To De Rossett, Henry Caruth.
Q. What did De Rossett and Caruth pay for their shares?
A. I do not know.
Q. They became partners with you?
A. Yes, sir.
Q. You do not know what your partners paid?
A. I know what De Rossett paid.
Q. What?
A. $130.
Q. How many did he buy out?
A. One-fourth.
Q. He paid $130 for it?
A. Yes, sir.
Q. Who was the other partner?

A. Henry Caruth.
Q. What did he pay for his?
A. I do not recollect now what he paid.
Q. He was also your partner?
A. He had one-fourth share.
[fol. 141] Q. Did Caruth and De Rossett sell their interest to the other Hammonds?
A. Yes, a year later.
Q. Who did he sell to?
A. I think De Rossett sold out to *Cal*ude Johnson; he sold first.
Q. When did he sell?
A. Something like the middle of April, 1921.
Q. What did Johnson pay for his interest?
A. He paid $130.
Q. Did he sell out?
A. Not right then.
Q. When did he sell out?
A. A year later.
Q. Who to?
A. Mr. Johnson after he sold out to Sam Gossett.
Q. What did Gossett pay?
A. I do not know; he became the other of a third.
Q. He became the owner of a third?
A. A half.
Q. He became half owner?
A. Yes, sir.
Q. You do not know what he paid for his half interest in it?
A. No, sir; I do not know. He just asked the man if it would be satisfactory for him to buy half of it.
Q. Johnson and you, continued to run it?
A. Gossett.
[fol. 142] Q. For how long did they run it?
A. They run it up until, I think, the next change was when Burnett came in; four or five changes while I was there, and maybe some others. I did not pay any attention to it.
Q. You did not pay any attention to your partners?
A. It was satisfactory for them to come in. I did not ask them what they gave; some told me and some I heard and some I did not.

Q. Gossett was your fourth partner?

A. Half, share.

Q. When was it he bought out Johnson and Caruth?

A. I did not say; I said it was a little later, April 1921. I do not know the date.

Q. You said that De Rossett sold to Johnson?

A. I said something about the middle of April.

Q. It was in April, 1921?

A. Yes, sir.

Q. That De Rossett sold to Johnson?

A. Yes, sir.

Q. When did Johnson and Caruth sell to Gossett?

A. I cannot say the date.

Q. Do you remember the month?

A. No, sir.

Q. Gossett became one-half owner, when did he sell and to whom did he sell?

A. He sold to fellow named Tillery and Red Woodard. [fol. 143] Q. When did the sale take place and what was the purchase price?

A. I do not know what they gave him.

Q. Had you struck the fault at that time?

A. No, sir; we had not struck the fault; our work had not struck it.

Q. It was running with the entry?

A. Something like this way.

Q. You were not bound to keep the slope straight?

A. You can keep it straight without turning them.

Q. The way the slope was going you were bound to strike the fault?

A. We did not do it.

Q. Can you tell when De Rossett sold to Johnson?

A. I can tell you that he came over there.

Q. Do you know whether Caruth sold to Johnson?

A. No, sir; I cannot answer for sure, only what they said.

Q. You were not having any trouble about cars then were you in 1920?

A. In 1921, during April and May we did not order any cars.

Q. The strike was not settled in 1920?

A. That is what I mean I did not order cars.

Q. You say you did not want any cars then in April and May, but in 1921?

A. Yes, we could get cars; we did not want any very much.

Q. In 1921?

A. Yes, sir.

[fol. 144] Q. Why?

A. Could not loan them; don't anybody want cars when opening up a mine only just one now and then to take out the coal as the mine developes. Sometimes we would not want a car for a month.

Q. When did the sale take place?

A. De Rossett sold something like the month of April, 1921.

Q. For $130?

A. Yes, sir.

Q. Johnson and Caruth sold to Gossett and then Gossett sold to Wooden and Red Woodard?

Q. When did the sale take place?

A. I do not know the date.

Q. Do you know the money?

A. When Gossett sold?

Q. Yes.

A. I do not recollect the month.

Q. How long did Tillery and Red Woodard stay in there?

A. They never stayed very long.

Q. How long?

A. Something like three weeks.

Q. Who did they sell to?

A. They sold to me and Mr. Burnett.

Q. They sold to you and Burnett; what did you pay for half interest?

A. We gave them something between five and six hundred dollars.

[fol. 145] Q. You do not know what you paid?

A. I do not recollect, we took over some debts and paid some money.

Q. How much money did you actually pay?

A. I do not recollect that, we gave them something around $550.

Q. Can you tell the jury why these men were changing so rapidly?

A. I can tell you what they said is all.

Q. You stated yesterday on your direct examination that that was a soft fault going through that fault it was soft, did you make that statement?

A. I do not recollect making a statement about the fault yesterday how it was going through.

Q. To operate the mine sue-essfully you had to go though that fault, didn't you?

A. It would be better mining to go through it, yes, sir.

Q. Had you made any prospect holes to ascertain the thickness of the fault?

A. No, sir; I had drilled no holes myself.

Q. Did you have any drilled?

A. No, sir.

Q. Did anybody else?

A. Yes, there were holes drilled over there.

Q. Before you sold out did you yourself drill or find out?

A. No, sir; I did not make any holes.

Q. You do not know what the change of that vein of coal was, and there wasn't any way for you to tell whether [fol. 146] you had to go through solid rock to get to the coal?

A. I do not know very much about it, but I can guess.

Q. Was there any other method of reaching the fault except drilling for it?

A. Yes, you can usually tell which way they go to find the coal; there are faults all over this country.

Q. Did Mr. Powers ever furnish you with box cars to load your coal in?

A. He offered us some box cars, I recollect, yes, sir.

Q. And you refused to load coal in them?

A. I told him we could not sell the coal.

Q. Didn't he set you box cars in there and you refused to load them?

A. He set in the box cars.

Q. Box cars were left in there to load coal in?

A. They set them for us; I do not know what they were left for, we did not order them.

Q. Did you have a conversation with Mr. Powers with reference to setting box cars at the Johnson spur to load coal?

A. No, sir; I did not order box cars.

Q. Didn't you have a conversation with Mr. Powers with reference to that matter?

A. He stated once that he set us some box cars, yes, sir.

Q. After you got the six cars?

A. Yes, sir; I did not hear anything about the box cars until after that.

Q. Did he say that he would furnish you box cars?

[fol. 147] A. Yes, I said a while ago he would.

Q. What did you say to him?

A. I told him we could not sell our coal in them.

Q. And you did not want them, and did not want them placed?

A. No, sir. If we had loaded our coal in them we could not have sold it.

Q. Did you know of any wagon loading mines using any box cars at that time?

A. No, sir; I did not know of any.

Q. You never heard of any?

A. Might have heard of one but didn't see any.

Q. You did yesterday. You do not remember about that conversation you say you had with Mr. Powers. Didn't you say yesterday that you offered to take your share of box cars?

A. Yes, sir, with all the other shippers.

Q. Now, you state to the jury you would not have taken them because you could not have sold your coal in them?

A. I made reference yesterday of how I offered to take them. I offered to receive box cars when it came my turn to take box cars and let my mine be idle without loading them without any complaint.

Q. In other words you would not load box cars at all?

A. I would have if I could sell coal in them.

Q. State whether or not Mr. Caudle was your selling agent?

A. Yes, sir.

[fol. 148] And had charge of that and told you he could not sell the coal loaded in box cars?

A. Yes, sir.

Q. He told you that?

A. Yes, sir.

Q. Therefore you would not load any coal in box cars?

A. Could not have done it, no, sir.

Mr. Charley Evans:

Q. They asked you how you could fix in your mind the date of June 22nd, 1922; I will ask you if the agent of the Midland Valley had ever before that date come to your place and told you they had to have your coal or shut you down?

A. No, sir.

Q. They had not?

A. No, sir.

Q. That is the first time and the last time and the only time that the agent of the Midland Valley has ever been to your place and demanded your coal and told you that if they did not get it they would shut you down?

A. Yes, sir.

Q. Is that a fact?

A. Yes, sir.

Q. Had they ever come there and put out any empty cars for your place before?

A. No, sir; not that I know of.

Q. Had they ever mentioned that there before?

A. No, sir; not to me.

[fol. 149] Q. So that June 22nd, 1922, is the only time while you were operating the mine that the agent of the Midland Valley Railroad Company came to you and demanded your coal at a price fixed by them and told you that if they did not get your coal they would shut you down?

A. That is the only time.

Q. Is that the reason, or not, that you can remember June 22?

A. Yes, sir.

Q. Counsel for defendant asked you about the agent of the Midland Valley at Midland, did you instruct your agent, Mr. Caudle, to order cars each day as you needed them?

A. Yes, sir.

Q. In addition to that, had you been to Mr. Powers yourself?

A. Yes, sir.

Q. And in addition to that, you called on the agent at Midland?

A. Yes, sir.

Q. Trying to get cars?

A. Yes, sir.

Q. With all that did you get cars?

A. No, sir.

Q. You went to the agent at Midland and at Excelsior and didn't get any cars?

A. No, sir.

Q. Tell the jury why there were so many trades and so [fol. 150] many purchases and sales, tell the jury why these men tried to sell out, if you know of your own knowledge?

A. Well——

Q. Not what they said; tell how come them to sell out; then they can ask you your means of information.

Mr. Pryor: We object to the general statement that if we want to cross-examine him we can.

Mr. Evans:

Q. Alright, I will let that alone. What was the state of development of the mine at the time these various trades were made?

A. It was not developed very well.

Q. Was it paying anything?

A. No, sir.

Q. Was it all going in and nothing coming out?

A. Yes, sir.

Q. The mine was in a state of development at that time?

A. Yes, sir.

Q. In May, 1922, did you know Pete Kaughman?

A. Yes, sir.

Q. How long have you known him?

A. Something like, I do not know just how long.

Q. Give the jury an idea, a year, or two years, or three years?

A. No, sir; I cannot say a year but I do not know for sure just how long.

Q. You had known him for sometime before May, 1922? [fol. 151] A. Yes, I knew him before that.

Q. Was he an official of the United Mine Workers?

A. Yes, sir.

Q. Did he go to places; go to Fort Smith and come out to the mines and go out in this coal field and things of that kind?

A. Yes, sir.

Q. You saw him and you know him?
A. Yes, sir; he was a board member of the miners.

Mr. Pryor:

Q. Where did you say this conversation with Frank Pigg about stealing cars occurred?
A. Down there on the railroad switch at our loading switch.
Q. What did you say Frank Pigg said with reference to the cars?
A. He hollored at my partner and said Mr. Burnett, what are you going to give me for stealing those two cars I set in there?
Q. Is that all?
A. That is about all I know.
Q. You did not hear him say he stole the cars?
A. Yes, he called it stealing those two cars.
Q. Tell the jury as near as you can the exact words he used?
A. When he started off he said, "Burnett, what are you going to give me for those two cars I stole and set in there for you?"
[fol. 152] Q. How far were you away from him?
A. Not very far.
Q. Were you any closer to him that Mr. Burnett was?
A. I will not say I was. We were pretty close together; I do not know just which one was the closest.
Q. How far were you from him?
A. I guess thirty or forty feet away.
Q. The train was in motion?
A. Going out slow just started up.
Q. He just asked him how much he was going to give him for those two cars he stole?
A. Yes, sir.
Q. Is that the exact language?
A. As well as I recollect, word for word.
Q. Did you have any other conversation with him with reference to that?
A. One more up town at Midland.
Q. What did he say to you up town?

A. He told me that if I got any more cars in there he would have to get them ordered in through this agent; and he said the last cars he set in there against orders and got a bawling out from Mr. LeFeber.

Q. Set them in there against orders?

A. Yes, sir.

Q. Who was present at that conversation?

A. No one but me and him.

Q. Wasn't Mr. Burnett there thirty or forty feet away?

A. No, sir; no one but me and Mr. Powers.

[fol. 153] Q. He did not say he stole the cars for you?

A. I do not know just how he stated it; he said he set the cars in there against orders.

Q. Where did that conversation occur?

A. At Midland.

Q. At the station?

A. Not right at the station but a few feet away.

Q. How far from the station?

A. Pretty close to the platform.

Q. Who else was present?

A. Wasn't any one present that I know of.

Q. How did the conversation come up, did you mention it to him, or he to you first?

A. We talked about that lots of time; I would ask when we would get cars?

Q. You did not hear him say he stole any except the one time?

A. He stated that at the mine; he either said he stole them or set them in against orders the last time.

Q. You testified on that before; didn't you testify that he told you at Midland he stole you these cars?

A. That is the way I testified; he either said he set them in there against orders or stole them.

Q. State whether it is a fact that you are testifying now with reference to these matters as you did six months ago?

A. I am as well as I know, yes, sir.

Q. But you state that he told you at Midland that he [fol. 154] stole the cars, you admit testifying that before?

Mr. Evans: He said he did not know whether he did or or not.

Mr. Pryor:

Q. Did he tell you that he stole the cars in that conversation at Midland?

A. He did not. He said he stole them or set them in against orders; I will not be sure which but he said he stole them at the mine.

Q. I will ask you if you did not testify at the last term of court that he told you at Midland that he stole these cars for you?

A. I might have done it.

Q. That is your idea?

A. Yes, sir; I might have said it that way, I cannot be positive; that is my idea.

Q. I will ask you if you didn't testify at the former trial as follows:

"He said them last cars you got; I set them in there myself and they are stolen cars, and kind of laughed and said I got a hell of a bawling out from Le Feber"; is that your testimony at the last trial?

A. That is something like my testimony, yes, sir.

[fol. 155] JIM FITZGERALD, a witness for the plaintiffs, being sworn, testified as follows:

Mr. Charley Evans:

Q. State your name, please?

A. Jim Fitzgerald.

Q. What is your age?

A. Seventy-four years.

Q. Where do you live?

A. Near Montreal, and Midland.

Q. How long have you lived there?

A. About twenty-two years.

Q. Are you related to Alten Burnett and Thomas Barkley?

A. No, sir.

Q. Are you interested in this mine?

A. No, sir.

Q. Do you know Floyd Tyler?

A. Well, I do not know him; I never saw the man before until he came up there and I don't know whether I know him or not.

Q. Did you ever see him before?

A. Not before, no, sir; not until he came to my house.

Q. When he came to your house—when was that?

A. Sometime in June, I cannot tell you what date.

Q. What year?

A. I did not pay any attention but think it was in 1922, I am not right sure.

Q. Tell the jury in your own way what Floyd Tyler did [fol. 156] when he came to you and where you went and what was done?

A. He came to my house and asked—wanted to know the way to the mine, and I cannot hear very good, it was some distance from my house and I walked down to the car and told him just exactly how to go up there and he asked me if I had anything to do and I told him no; and he asked me if I would go with him and show him the way, and I told him I would; and we went up there part of the way and did not get all the way but walked the rest of the way, and he got up there and I did not stay around him, I just walked around through the boiler room and one thing and another; and I stood around and did not fool about them; I do not fool around men when I think they are doing business. You might get in trouble and get up in court, like I am in this.

He got ready to start and I was standing near the boiler room and walk down there and he told that man that he would give him 5¢ more on a ton the rest of this month up to the first of July, and if the coal goes up I will give you more; at that time I do not know whether he said he would shut them down, he said, I believe he said, I could shut your mine down; that is all I heard when we got ready to start; and we got in his car and come down the road and he wanted to take me back to the house, and I told him no that I would walk up there, and he looked up where the spur was, where the cars were on the spur and said: "I am going back and have those cars pulled this [fol. 157] evening and shut those fellows down"; and I just turned off. I might have heard a lot if I hadn't turned off and left him. He left me and that is all there was to it

The cars were pulled that evening and that is the way I gave it the other time I was here.

Mr. Pryor: Objected to.

Witness: He is going to object to it. I said I was going to tell what I told before. They were pulled right that evening; went away with a load of coal to Excelsior and came back.

Mr. Pryor: Are you arguing now or testifying?

Witness: That is all there is to that.

Mr. Evans: He told you when he left there he was going to close them down and was going to pull the cars, and they were pulled that evening?

A. Yes, sir.

Q. He said I am going back and have those cars pulled?

Mr. Pryor: That is leading and suggestive.

The Court: The objection is sustained.

Mr. Pryor: I ask that the question and answers and argument of the witness be withdrawn.

The Court: The court holds that that is not proper.

Mr. Evans:

Q. Did Mr. Tyler make any other statement to you?

A. No, sir; not after that. I turned and went home and I do not know where he lived; he lived at Excelsior, I guess.

Q. Do you know anything else about the facts?

[fol. 158] A. No, sir; I do not; I have told all I know.

Cross-examination.

Mr. Pryor:

Q. Are you ready?

A. Ready for what? Yes, I am ready.

Q. You make the statement now on the witness stand that you did at the last trial?

A. The same statement.

Q. Yes, sir.

A. I told something near what I have told this time.

Q. Something near?

A. As near as I could.

Q. You do not undertake to detail the exact words that Mr. Tyler used to you?

A. Well, I do not know whether I did or not.

Q. Anybody else know?

A. Sure not.

Q. The jury don't know, unless you tell them. When was the first time you recall ever having the conversation with Mr. Tyler, which you have detailed?

A. The first time?

Q. Yes; the first time you recollect having such conversation?

A. I cannot tell you anything about that; I was not thinking about getting into this trouble.

Q. Who got you into trouble?

A. Don't ask me something I cannot answer.

Q. You didn't have to get into this trouble; who got you into it?

[fol. 159] A. Mr. Burnett got me into it; and in a way I got myself into it.

Q. When did he first get you into it?

A. I cannot tell you.

Q. Do you remember the year?

A. No, sir; I do not remember the year. I got myself into it by talking.

Q. You talked too much?

A. Talked a little too far.

Q. You are like a parrot about talking?

A. Yes, sir.

Q. Mr. Burnett got you into it by asking a question?

A. No, sir; he did not ask me a question; I told the question myself.

Q. You told the question yourself; you asked the questions and answers yourself?

A. He did not get me into it; I got myself into it.

Q. You say you ask- the questions and then answered them?

A. That is true; I got myself into it by talking too far.

Q. You are not interested in this mine?

A. No, sir; not a bit in the world.

Q. You did not make a memorandum of what was said?

A. No, sir.

Q. You did not talk to anybody about it after that?

A. I do not know; I guess I talked a whole lot; I am not trying to tell you what I talked about.

Q. You say Mr. Burnett was the first man you talked to about it?

[fol. 160] A. I do not know whether he was or not.

Q. You did not make a memorandum of the conversation?

A. No, sir.

Q. You say he told them he could shut them down. As a matter of fact, didn't he make this statement to him, or words to that effect, that if the railroad company could not get the coal to run its engines, it could not pull any coal or haul any coal for anybody?

A. He didn't say nothing like that to me.

Q. How long were you with him after he had the conversation at the time? Who was with him?

A. Just myself?

Q. Who was there at the time the conversation took place at the mine?

A. I do not know. Mr. Barkley and Mr. Burnett, and I do not know who else; I did not pay any attention.

Q. Did you pay any attention to what he said?

A. Not altogether. Just happened to go in when he was making a start to leave. I did not stand around them.

Q. How far do you live from Jackson Spur?

A. About a quarter of a mile.

Q. Did you walk over there to find out whether the cars were pulled that evening?

A. I could see the spur from home.

Q. Do you know whether they were loaded or empties?

A. I cannot tell about that.

Q. Do you remember whether it was that day or the next [fol. 161] day that they were taken out?

A. That same evening; no next day about it.

Q. As far as you know they might have been loads?

A. They could have been; I do not know anything about that, they might have been, and they might have been empties.

Q. You made no memorandum of the date?

A. No, sir.

Q. You are not interested in it in any way?

A. No, sir.

Mr. Evans:

Q. Had you ever before or since that time heard of an agent of the Midland Valley Railroad Company shutting down any mine?

A. No, sir.

Mr. Pryor: We object to that.

Mr. Evans:

Q. Did you ever hear Mr. Tyler before or after that threaten to shut down any mine?

A. No, sir; that is the first time I ever saw him; and the next time I saw him was at court here.

[fol. 162] Mr. CAUDLE, a witness for the plaintiff, being sworn, testified as follows:

Mr. Charley Evans:

Q. State your name?

A. W. C. Caudle.

Q. Where do you live?

A. Greenwood, Arkansas.

Q. What business are you engaged in?

A. Wholesale coal agent.

Q. Did you have a contract with Alten Burnett and Thomas Barkley during the time they operated a mine here to sell their coal for them?

A. Yes, a verbal contract.

Q. You were their agent and handled their coal?

A. Yes, sir.

Q. And in ordering cars for them?

A. Yes, sir.

Q. Did you order cars for the plaintiffs, the Fax Coal Company in 1922, up to the time when they sold out their mine?

A. I ordered cars for them from June sometime I do not know just exactly about the date.

Q. Up to the date they sold out?

A. Yes, sir.

Q. You ordered cars for them until the date they sold out?

A. Yes, sir.

Q. Do you remember the occasion when they were unable [fol. 163] to get cars in June, 1922?

A. Yes, sir.

Q. Immediately following that did you begin ordering cars for them from the Midland Valley Railroad Company?

A. Yes, sir.

Q. How?

A. By filing a 5 P. M. report with a request for cars on a blank that came from the agent of the Midland Valley.

Q. Agent of the Midland Valley Railroad Company?

A. Yes, sir.

Q. The railroad company furnished these blanks?

A. Yes, sir.

Q. I will ask you if this is one of the blanks (presenting a blank) and these are copies of some of the orders?

A. Yes, sir.

Q. What are these (presenting tickets).

A. These white sheets are receipts from the Post Office for registered mail; and the red cards are receipts from the delivery of the registered mail.

Q. Who were they registered to?

A. R. G. Powers.

Q. Who was R. G. Powers?

A. Agent of the Midland Valley Railroad Company, at Excelsior.

Q. These are copies of some of the reports you filed with the Midland Valley Railroad Company requesting cars? (presenting papers).

[fol. 164] A. Yes, sir.

Here the papers and cards and tickets referred to were offered in evidence.

Mr. Evans:

Q. These red cards are receipts signed by the agent and these white sheets given by the Post Master for packages delivered?

A. Yes, sir.

Q. In which you ordered cars in writing from the Midland Valley Railroad Company?

A. Yes, sir.

The contract heretofore referred to was marked Exhibit "B".

The cards and receipts and tickets and papers referred to were marked Exhibit "C", consisting of a great number of papers, and introduced in evidence.

Mr. Evans:

Q. Immediately after the time in June when they were not able to get cars from the Midland Valley Railroad you then began to furnish them a request?

A. Yes, sir.

Q. Daily?

A. Yes, sir.

Q. And that continued practically up to the time they sold out?

A. Yes, sir.

Q. Did you order each day during this time?

A. Yes, sir.

Q. And the written orders were sent out to the Midland [fol. 165] Valley Railroad Company?

A. Yes, sir.

Q. Each day?

A. Yes, sir.

Q. For how many cars?

A. Two cars.

Q. It is in proof here that beginning April 1st, 1922, there was a strike of the United Mine Workers?

A. Yes, sir.

Q. And that continued until about the middle of August?

A. Sometime about that time; I do not remembe- the exact date.

Q. During that time, and during the balance of the year 1922, how was the price and demand?

A. What time to begin with?

Q. Say from June and July begin July 1st, 1922, and during the balance of the year, 1922, what was the coal market and the condition and the demand?

A. It was good. Very good during the earlier part of that period until the contract was signed between the operators and the mine workers.

Q. How was it then?

A. It ran steadily for sixty days or so.

Q. Could you have sold the entire output of the plaintiffs' mine during this entire time?

A. Yes, sir.

Q. What was their capacity during this time?

A. About a fifty ton car.

Q. That is a fifty ton car per day?

[fol. 166] A. Yes, sir.

Q. You sold the entire output of this mine during this time so far as you could?

A. Yes, sir; so far as I could.

Q. Have you a record you made at the time showing the number of cars you sold for them during the year 1922 on from June?

A. Yes, sir.

Q. Let me have that record please?

A. (Witness turns to record.)

Q. Please state to the jury the number of cars your record shows that they shipped during the month of June, 1922?

A. Yes, sir.

Q. Please state the date of these shipments?

A. Three cars on the 21st day of June; one on the 23rd; one on the 24th and one on the 26th.

Q. How many on the 22nd?

A. None.

Q. Does your records show the date that the cars were billed and shipped out?

A. Our invoice carries the original billing and it shows the dates they were billed out and sometimes they reconsigned the car and the invoice will show the date of the reconsignment; and usually they would not always indicate the date of the original billing.

Q. Does your record show that date they were billed out, or they were sold?

[fol. 167] A. The date they were billed and re-billed.

Q. You do not know whether it was billed in the first instance, originally, that is the date of the billing originally?
A. Yes, sir.
Q. Your records don't show the date loaded?
A. No, sir.
Q. But shows the date of the original billing?
A. Yes, sir.
Q. And don't show the date they were furnished?
A. No, sir.
Q. For July, please state the number of cars furnished by the Midland Valley to the plaintiffs?
A. Three cars July 1st, 6-18.
Q. Please state for August?
A. Two cars.
Q. Please state the date?
A. August 18th.
Q. Both?
A. Both.
Q. August 8th?
A. August 8th.
Q. In September state the number of cars furnished?
A. Seven.
Q. Seven cars furnished?
A. Yes, sir.
Q. Ple-se state the date these were furnished?
A. 21st of September, 19, 21 September 22, 21st Septem-
[fol. 168] ber, 27th and one on the 11th.
Q. What date?
A. September.
Q. How many in October?
A. Two.
Q. What date?
A. October 13th.
Q. Both?
A. Yes, sir.
Q. How many in November?
A. None.
Q. How many in December?
A. None.
Q. October 13th is the last date?
A. Yes, sir.

Q. In addition to furnishing written requests for cars, as you have stated, what else, if anything, did you do as agent of the plaintiffs to try to get cars for them during this period?

A. I talked to Mr. Powers about it; I talked over the phone to the Midland Valley at Muskogee.

Q. Who did?

A. I did.

Q. More than once?

A. Yes, sir.

Q. Called the headquarters of the Midland Valley Railroad Company, where?

A. At Muskogee.

[fol. 169] Q. Do you know who you talked to?

A. The man's name I do not know.

Q. What did he represent himself to be?

A. I called for the superintendent and they told me he was out and I told him I would talk to his chief clerk and some man was on the phone answered and I talked to him.

Q. Did you tell him the situation?

A. Yes, sir.

Mr. Pryor: I object to the conversation he had with some unknown man. As a matter of fact there was not any superintendent and therefore he could not have talked to the chief clerk of the superintendent. Without showing who he talked to it would be absolutely no way to bring the man here unless they could identify him as the agent of the defendant Railroad Company; our defendant could not be held responsible for what somebody said unless they could show by the testimony that it was some person authorized to speak for the company.

Mr. Evans:

Q. This same question was up when the case was tried at the last term of court, and the witness testifies that he called the home office of the defendant railroad company at Muskogee, called for a certain official at a certain place of business; where the railroad company, in this case, was doing business and the witness testified to the conversation that he had over the phone.

The Court: The objection is overruled and he is permitted [fol. 170] to testify.

The defendant saved an exception.

Mr. Evans: You state you called for the headquarters of the Midland Valley Railroad Company at Muskogee: Is that the place of the headquarters of that company?

A. Yes, sir.

Q. You called for the headquarters of the Midland Valley Railroad Company at Muskogee over the telephone and called for the superintendent?

A. Yes, sir.

Q. Of the Midland Valley Railroad Company?

A. Yes, sir.

Q. And you were advised over the telephone that the superintendent was out?

A. Yes, sir.

Mr. Pryor: We object to this. The witness has not testified that.

Mr. Evans: He has already testified that.

Mr. Pryor: That is needless repetition and we never will get through.

The Court: The witness has testified to that.

The Court He will be permitted to ask him additional questions.

The defendant saved an exception.

Mr. Charley Evans:

Q. What information did you give the person you talked with over the phone in this instance?

[fol. 171] A. I told him the situation of the Fax mine; that they were not getting cars.

Q. What did he tell you?

A. The last conversation I had with him I told him that the operators of the mine were going to bring suit if they did not get cars.

Mr. Pryor: I object to that; that is a self serving declaration.

The objection was overruled and the defendant excepted.

Mr. Evans:

Q. Al-right, Mr. Caudle, preceed with the conversation?

A. And he said that he had a good lawyer down here to look after it.

Q. He said that he had a good lawyer down here to look after that?

A. Yes, sir.

Q. At Greenwood?

A. Yes, sir.

Q. What else did he say?

A. He mentioned Mr. Pryor's name and said that he was an old Greenwood man.

Mr. Pryor: Does the court hold that this is admissible?

The Court: He can give that as a part of the conversatio; if that is a part of the conversation.

The defendant saved an exception.

Mr. Charley Evans:

[fol. 172] Q. Did you have any further conversation after this one wherein he told you that they had a good lawyer down here?

A. No, sir.

Q. They would look after matters of that kind?

A. Yes, sir.

Q. Do you know how many conversations you had with the headquarters of the Midland Valley?

A. I do not recall exactly.

Q. You had more than one?

A. Yes, sir.

Q. Did you get any cars as a result of your conversations?

A. No, sir.

Q. During this period please state the price—begin July 1st. what was the price of mine run coal and what was the price of lump coal?

A. Do you want the price we sold at or as a whole?

Q. Just the average market price of each kind; give the price of the lump coal and give the price of the mine run coal and just the average for July 1st and August? Can you state from memory about that?

A. In July I sold mine run coal for from $3.75 to $5.00.

Q. Mine run?

A. Yes, sir.

Q. What was lump during that time?

[fol. 173] A. I find one mine run also at $6.50 and one at $6.75.

Q. In July?

A. Yes, sir.

Q. Alright.

A. Lump coal for $7.50 and $7.25.

Q. Is that during July?

A. Yes, sir.

Q. Is that the market price of the coal during that period?

A. Yes, sir.

Q. Did you sell it on the open market to the person to whom you could get the most for it?

A. Yes, sold it upon the open market.

Q. During August, what was the price of coal, was it higher or as high in August as it was in July?

A. It seems to have been higher. I find some at $5.25 to $6.75 for mine run.

Q. What was lump during that time?

A. I find $7.50 and $7.25.

Q. For September how did the prices run?

A. $4.50 to $5.50.

Q. For mine run?

A. Yes, sir.

Q. During September?

A. Yes, sir.

Q. What was the price of lump coal?

[fol. 174] A. $7.50 to $8.50.

Q. For October?

A. $3.50 to $5.00 on mine run.

Q. What was lump?

A. $7 to $8.

Q. Did it remain practically that way on until the first of the year. Was there any special change either up or down?

A. Just a moment. It appears some at $3.50 and $4.00. $3.25 to $4.00 on mine run and $7 to $8 on lump.

Q. The first was 1922?

A. That is November I was speaking of.

Q. What about December, if there is any?

A. Mine run $3.25 to $4.00.

Q. What was lump?

A. $6.50 to $7.50.

Q. These prices are taken from your record of coal sales made at the time?

A. Yes, sir.

Q. And are the average prices during that period of time?

A. Yes, sir.

Q. For coal of the same grade and quality of the plaintiffs' coal in this case?

A. Yes, sir.

Q. Mr. Caudle, in making orders on the 5 o'clock report, written orders, you testified about furnishing to the agent, please state when they were furnished or sent to the agent [fol. 175] of the Midland Valley Railroad Company, and how cars would be furnished on them; please state how that was?

A. Say it again?

Q. When you send the written order, say you sent in this afternoon, when would cars ordered be set?

A. If you ordered cars, for instance they would be set for loading tomorrow.

Q. You would furnish the 5 o'clock report requesting cars for your next day's run at your mine?

A. Yes, sir.

Cross-examination.

Mr. Pryor:

Q. You were giving prices during the various months say June 22nd, to December, 1922, on mine run, lump coal, did this mine produce any slack coal?

A. I can not tell you off-hand. I would have to take a look at my invoice.

Q. When you produce lump coal a certain per cent of the lump coal is slack?

A. Under the conditions under which these men were operating it does.

Q. What do you mean by under the conditions under which these men were operating?

A. They were running the mine in the regular manner of shotting it.

Q. Would the wagon haul have anything to do with making slack?

A. Some, yes, sir.

[fol. 176] Q. Every time you handle it and the oftener you handle it the more slack you get?

A. Yes, sir; that is true.

Q. What proportion of the coal in the way it was handled there and the mine shotting and the wagon haul would be slack?

A. What per cent of the entire breakage?

Q. Yes, sir.

A. I would say about 50 per cent.

Q. Every time you produce a car of lump coal you produce a car of slack?

A. Yes, sir.

Q. Did you handle the slack?

A. As far as I know I did.

Q. What was the price of slack; what would it run at that time?

A. The whole period?

Q. It took then, two cars of coal to produce a car of lump and one car of slack?

A. Yes, sir.

Q. What was the slack worth? Go to July 1st?

A. I do not seem to have shipped out but one car of slack in July; that is at $3.75.

Q. One car of slack during the month of July?

A. Yes, sir.

Q. How many cars of lump did you ship during that month?

A. From this mine?

A. Yes, sir; confine your testimony to this mine alone; was this car of slack shipped from this mine?

[fol. 177] A. It was not.

Q. What became of the slack that came from this mine; you were handling the entire output were you not?

A. Just a moment. I do not find any shipment of slack from that mine in July.

Q. You did ship a car of slack, do you know what the price of slack was at that time approximately?

Mr. Evans: He said $3.75.

Mr. Pryor:

Q. For slack coal?
A. Yes, sir.
Q. In July?
A. Yes, sir.
Q. What was it in August? Did you ship any for that mine in August?
—. ——.
Q. Is not the slack and mine run coal and slack and lump altogether?
A. Yes, sir.

Mr. Pryor: He was giving the price of lump coal separated from the slack.
Witness: We did not ship any slack from that mine in August.

Mr. Pryor:

Q. What did they do with the slack?
A. I do not know, suppose he shipped it.
Q. What became of the slack?
A. If they produced it I did not have it.
[fol. 178] Q. Did they ever ship you any lump coal from that mine in July or August, or any of these months after they shipped any lump coal?
A. On September 19th, they shipped a car of lump coal.
Q. A car of lump coal?
A. Yes, sir.
Q. September 19th; where was that car shipped to?
A. To Jennings and Ray at Panama, Oklahoma. We might have reconsigned it and I do not know what the bill would show.
Q. Did you ship a car of slack at the same time?
A. Yes, sir.
Q. Where did that go?
A. To the Municipal Light and Water corporation at Siloam Springs.
Q. What was the price of that slack?
A. $2.50 a ton.
Q. Do you find any others?

Mr. Evans:

Q. Did you say the price of that car of lump coal? What was the price of the lump coal?
A. $8.00.

Mr. Pryor:

Q. That is an average of a little over $5.00 taking a car of slack and a car of lump together? Do you find any other cars of lump?
A. Yes, sir.
[fol. 179] Q. Where?
A. September 27th.
Q. Where was that shipped to?
A. To John M. at Humphrey, Arkansas.
Q. Where is Humphrey, Arkansas?
A. I think it is Southeast part of Arkansas, I cannot tell you I was never there.
Q. Did you ship a car of slack after that?
A. Yes, sir.
Q. Where to?
A. Hope Brick Works, at Hope, Arkansas.
Q. What did you sell that slack at?
A. $3.50.
Q. What did you get for the lump?
A. $8.00.
Q. Do you find any other cars of lump?
A. October 13th.
Q. When?
A. October 13th.
Q. A car of lump?
A. A car of lump.
Q. Where did you ship that to?
A. Benton County Lumber Company, Bentonville, Arkansas.
Q. That coal would be shipped out to Panama?
A. To Greenwood MOP at Fort Smith and Van Buren, Frisco which moves North in the State.
Q. To Greenwood and then to Fort Smith?
A. To Van Buren.
[fol. 180] Q. What did that sell for?
A. $8.00.

Q. What did the slack sell for?
A. $2.00.
Q. Three cars sold before, is that all?
A. That is all the shipments for the Fax Coal Company.
Q. In August and September, did you ship any lump coal for August?
A. I will have to go back over that again.
Q. Alright.
A. I have September 19th, one car September 27th, one car.
Q. Back of that in July and August, did you ship any lump coal for them?
A. We did not ship any in August.
Q. When were you first employed by the Fax Coal Company to take charge of the selling of their coal?
A. I do not recollect the date.
Q. Were they selling any coal during August?
A. I do not know.
Q. Is there any way you could fix it when you began handling the production of that mine?
A. The first cars I shipped for that company was March, 1922.
Q. You do not know whether they sold coal to any parties other than you or not?
A. I do not know.
Q. March, 1922, when did you begin filing these applications for cars with the Midland Valley Railroad Com-
[fol. 181] pany?
A. I cannot tell you the exact date of that?
Q. Can you tell the approximate date?
A. It was about the time we found that we were not being furnished cars.
Q. You say we, who do you mean?
A. I mean the Fax Coal Company.
Q. You are president?
A. No, sir.
Q. Of the Arkansas Valley Coal Company?
A. No, I am just proprietor.
Q. Have you one of your letter heads with you?
A. No, sir.
Q. Don't it show on the letter heads of the Arkansas Valley Coal Company mine that is such and such places?

A. No, sir.

Q. What?

A. It shows miners and shippers of certain coal.

Q. On your letter heads it says miners and shippers of coal. Where do you mine coal?

A. At present I am interested in an operation in Oklahoma.

Q. I mean at that time. How long have you had this letter head? Will you bring one of them to court this afternoon?

A. Yes, sir.

Q. Miners and shippers of coal were you interested in any mine during the month of June, 1922?

[fol. 182] A. No, I do not recall that I was.

Q. In June, or any time in the year 1922?

A. I do not recall that I was.

Q. Still that letter head says miners and shippers of coal; you mean the shipper for somebody else?

A. Yes, sir.

Q. Your business was that of a broker handling coal for others?

A. I mean this: Sometimes I acquired a small interest in some little operation.

Q. You depend on a commission?

A. Up until now it has been my practice to depend on a commission.

Q. Did you have any stated commission that you charged each and every shipper, different contracts with different mines?

A. I had different contracts with different mines, depending on the tonnage and the grade of coal.

Q. Depending on the tonnage and grade of coal?

A. Yes, sir.

Q. How many mines do you represent on the Midland Valley Railroad that you sell coal for?

A. This was the only one.

Q. The Fax Coal Company was the only mine?

A. Yes, sir.

Q. You knew the capacity of the mine?

A. Yes, sir.

Q. About a car of coal a day?

[fol. 183] A. About a 50 ton car a day.

Q. You were not interested in any other mine and were not selling coal for any other mine except the Fax Coal Company mine during the period of June 22nd, 1922, until December 31st, 1922?

A. We handled coal for most any mine that wished us to handle it for the market.

Q. How many wished you to handle it then?

A. I cannot recall any now.

Q. What commission did you receive; you did not have a standard rate of commission; how could there be a difference in the commission?

A. To give you an idea, the Henryetta field pays a larger commission than the McAlester field, higher grade of coal and higher preparation.

Q. I am talking about your custom? Do you represent the McAleister and Henryetta fields?

A. I sell some coal for those mines.

Q. Did you at that time?

A. Yes, sir.

Q. You previously stated the Fax Coal Company was the only coal company you handled coal for.

Mr. Evans: That he had a contract for.

Witness: On the Midland Valley.

Mr. Pryor:

Q. You say the contract was verbal?

A. As well as I remember it was.

Q. You do not remember whether it was in writing or not?

[fol. 184] A. No, sir; I do not recall Mr. Pryor.

Q. Who did you make it with?

A. With these gentlemen.

Q. What was the contract?

A. It has been so long ago I do not recollect just what it was.

Q. You do not recall; is that customary for you to have verbal contracts with the operators of mines?

A. Yes, we had some verbal, and had some in writing.

Q. You cannot tell the jury you do not know what you were charging the plaintiffs in this case for handling their coal?

A. No, taking it as a whole I cannot tell you. I can get my records and bring them here and tell you.

Q. You do not remember that?

A. Our usual custom is——

Q. I did not ask you that; I asked you what the contract was with the plaintiffs to handle their coal?

A. I do not recollect what it was.

Q. You do not recollect the amount you were charging?

A. No, sir.

Q. Does your records show?

A. Yes, sir.

Q. You have our books, can't you turn to them and tell?

A. Yes, sir.

Q. Why don't you do it?

Mr. Evans: That is the first time he was asked to.

Mr. Pryor:

Q. Did you keep these books?

[fol. 185] A. Sometimes I do and sometimes I do not.

Q. Sometimes you do and sometimes you do not, somebody else does?

A. Sometimes I keep them myself and sometimes I have my business to look after and I cannot keep the books and I hire some one else.

Q. Who did you hire at various time-? These figures that you testified to were they your figures or the figures of some person you hired?

A. The most of them I made.

Q. Go ahead if your books show how much did you charge these people for handling their coal? I would like to see those books.

A. This mine we sold coal for (indicating on book) we got 25¢ a ton.

Q. Is that $3.75 or $3.50?

A. We gave them $3.50.

Q. You did not buy that; you did not exactly say you sold coal for them; you made them a certain bill?

A. We mailed them a statement.

Q. The customer did not know what you sold it for?

A. Yes, sir.

Q. How did they know it? Did you send them a bill you received from the man to whom you sold it? These people

in Benton county to whom you sold coal, did they send you a statement?

A. I cannot tell you whether they sent me one or not; they remitted for the car.

[fol. 186] Q. Did you let the mine operators know to whom you were selling the coal?

A. Yes, sir.

Q. You sent them a bill showing the amount you sold the coal for?

A. Yes, sir.

Q. Every time?

Mr. Evans: The witness said when he sold the coal for $3.75 he settled for $3.50; and that is 25¢ minimum price per ton he testified to.

Mr. Pryor:

Q. Was that your contract with these operators, the plaintiff in this case that you were to charge them 25¢ a ton?

A. Minimum.

Q. When did the maximum apply?

A. It was as much trouble to sell one car as another.

Q. Why was there a variation in the commission?

A. The capital necessary to handle coal that is sold at a high price. It takes more capital a car you see to sell it at a cheaper price.

Q. Who furnished the capital? You say it takes more capital, who furnished the capital.

The Court: When that goes in the only thing I can see——

Mr. Pryor: They have testified that the commission varies and I am trying to find out why it varies.

Mr. Evans: What difference does that make?

The Court: I do not think that that is in the case.

[fol. 187] Mr. Pryor: It goes into the cost of production. He just stated that it takes more capital and I asked the question who furnished the capital. Did these men have to furnish it?

The Court: They swore they go about $100 car profit; that is the proposition, the profit they made.

Mr. Pryor:

Q. When did the maximum rate of 6% apply?

A. Why, right at 6%.

Q. I will pass from that. You sent these by registered mail? (presenting order sheets).

A. Yes, sir.

Q. Order for these cars?

A. Yes, sir.

Q. All these in your hand writing; all these things?

A. These two are.

Q. Thes- (indicating)?

A. Yes, sir.

Q. Is this in your hand writing (presenting other sheets)?

A. Yes, sir.

Q. Here is another one, that is in your hand writing (pointing out sheet)?

A. Yes, sir.

Q. And this (indicating)?

A. Yes, sir.

Q. And this (indicating)?

A. Yes, sir.

[fol. 188] Q. All of them in your hand writing, you furnished them?

A. Yes, sir. All I have sent are in my handwriting. The orders presented to the jury.

Q. These are what you call five o'clock reports (indicating the records)?

A. Yes, sir.

Q. You know they had to be correctly made?

A. Yes, sir.

Q. You were required under the rule of the Interstate Commerce Commission for every operation of a mine to know the capacity of the mine?

A. Yes, sir.

Q. You knew it was a violation of the orders of the Interstate Commerce Commission to order any more cars than you could load, didn't you?

A. It was my idea to order no more than they could load a day.

Q. You knew that in giving the capacity of the mine you had to give the correct number of cars the mine could produce, didn't you?

A. I estimated it at 50 ton, and most gondola cars are 40 tons.

Q. You knew the report had to show the name and number of the mine; and this report showed the number of the mine and tons one hundred, cars two, number of cars loaded, none, and empty cars left over in mine 5 p. m., number of hours worked lost with cause of shut down, eight, [fol. 189] showed tomorrow's requirements, rating wanted tons one hundred, cars two, that is the information shown on this first report, is that right?

A. Yes, sir.

Q. The first car at this hour, 6 A. M. gondola, is that right?

A. Yes, sir.

Q. Do you know what a gondola is?

A. I only do the best I can——

Q. I asked you if you knew what a gondola car was? Don't you know it was against the orders of the commission to rate those mines at 100 ton capacity when the mine did not have that capacity?

A. It loaded one car and part of another one.

Q. You stated and admitted that you rated this mine out at one hundred ton a day, and don't you know that was not true?

A. These men informed me that that was true.

Q. They informed you that the capacity of that mine was one hundred ton a day, did they?

A. That it was two cars; that they needed two cars.

Q. I will ask you if under the heading of rating if the report does not show one hundred ton, and don't you know that that was not true; that that mine never was able to produce one hundred ton of coal a day and that it was producing only forty-five ton a day?

A. I do not know anything about the mine until I started to handling the coal.

[fol. 190] Q. When you started to handling the coal that is when, I mean that you actually filled out the report rating the mine one hundred ton a day, when the mine was incapable of producing one hundred ton a day?

A. No, I was not at the time and I do not know what it was capable of doing.

Q. You stated in the report signed by you that the capacity of the mine was one hundred ton a day, where did you get that information?

A. From Mr. Barkley and Mr. Burnett.

Q. Did Mr. Barkley tell you that too?

A. I do not recall that he did.

Q. They told you that they could produce one hundred ton a day?

A. Yes, sir.

Q. And that is the basis upon which you asked for these cars?

A. Yes, sir.

Q. During this period covered by these original orders that is all the orders you made for cars, wasn't it?

A. Say it again?

Q. For instance, you have no other orders for these dates except what is shown on the printed original request?

A. No other dates that you have there.

Q. Take this, it shows from September to December?

A. I cannot say whether there are any other orders placed or that those you have were all we placed; we placed [fol. 191] them every day.

Q. How would you place them? See the orders, "Instructions to Coal Operators: This report must be properly filled out, numbered consecutively for each week and handed to the railroad agent by 5 o'clock P. M. daily, except Sunday"; did you ever hand it to the railroad agent?

A. In person, you mean?

Q. Did you hand it to them as it says?

A. No, sir; I do not recollect.

Q. You sent them by registered mail?

A. Yes, sir.

Q. Did you register the mail yourself?

A. Yes, sir.

Q. And you mailed them?

A. Yes, sir.

Q. Do you know when they reached Excelsior?

A. No, sir; I do not know that.

Q. You demanded return receipts for them?

A. Yes, sir.

Q. These receipts shows when they were received over there?

Q. Yes, sir; they show the same evening.

Q. I will ask you if this is one of the receipts that show when it was received there?

A. This shows 11-14-22.

Q. When was that received at Excelsior?

A. 11-15, that is when it was receipted at Excelsior, but [fol. 192] does show when it was received at Excelsior.

Q. Where did you mail it?

A. In the Post Office.

Q. To whom?

A. To R. F. D. Excelsior.

Q. What time of day did you mail it, any particular card? This one?

A. This one, no, sir.

Q. Do you know when you mailed it?

A. No, sir.

Q. What time of day was it mailed out? Here is one December 21st, when did you mail that?

A. This receipt shows 12-21st.

Q. When does it show it reached Excelsior, the return card?

A. It does not show when it reached Excelsior.

Q. Does it show when it was signed for?

A. No, sir.

Q. Every time you signed for it the date is put on there and shows 12-2-22? You do not know when these requests or reports reached Excelsior?

A. I do not know.

Q. Here is one shows mailed December 6th, when does that show it was received?

A. Over there the next day.

A Juror:

Q. You state that on the 14th, the post master's mark [fol. 193] shows it was received on the 15th and returned to the post master at Greenwood?

Mr. Pryor (interrupting):

Q. This card, when does that seem to represent the date down there, is that when it was received?

A Juror (interrupting):

Q. That is the date he received it; the date he received this card 11-15 on the same date the Post Master's mark is here, he gave it on the 14th?

A. Mailed it out here the 14th.

Mr. Pryor:

Q. That is the only method you adopted for making these original request*ed* of the agent at Excelsior?

A. Yes, sir.

Q. By sending it by registered mail and dropping it in the office here after 5 o'clock?

A. I did not notice what time.

Q. The rule required that it should not be mailed after 5 o'clock: "This report must be properly filled out, numbered consecutively each week and handed to the railroad agent by 5 P. M. each day except Sunday"; and you would wait until after 5 o'clock to do that; did you conform to the regulations of the printed reports?

A. That rule depends on what the mine was doing; whether it was running or whether it was idle.

Q. But when the mine was working and not idle, but when the mine was working when you mail them; would you wait until after 5 o'clock?

[fol. 194] Yes, sir.

Q. You would mail them here after 5 o'clock; and you knew the mail did not leave for Excelsior until the next day, didn't you?

A. On the R. F. D.

Q. On the R. F. D.?

A. Yes, sir.

Q. You knew it would not leave until the next day?

A. Yes, sir.

Q. How did you expect the agent at Excelsior to know when you mailed them after 5 o'clock and the mail would not go out until the next morning R. F. D.?

A. I do not recall at that time.

Q. You knew the mail did not leave until morning, didn't you at 7 o'clock?

A. Our mail is changed from railroad to service cars and I do not recall just what time it left there.

A Juror: It left at 8 o'clock.

Mr. Pryor:

Q. You ordered the cars to be delivered at 6 o'clock the next morning?

A. I would call Mr. Powers on the telephone and tell him we wanted him to send them over.

Q. But you knew a written order had to be there and the requirement of the Interstate Commerce Commission rule?

A. I did not read the requirements.

Q. Why did you go to the agent and get these blanks unless you expected to conform with the requirements of [fol. 195] them?

A. I usually got them from Mr. Henson, Agent of the Midland Valley.

Q. Did you keep a supply on hand at the time?

A. Yes, sir.

Q. Why did you keep them?

A. For filling out these reports.

Q. What?

A. For filling out these requests here.

Q. For reporting the capacity of the mine?

A. Yes, sir.

Q. You knew the rule required that of the railroad company?

A. I did not know it until I started to filing them, by reason of the fact that they had been furnished cars over there without them.

Q. Who called your attention to the fact that you had to make a report of the capacity of the mine and the number of cars needed? Did the agent call your attention to that fact?

A. I do not recall who did that.

Q. You got them from the agent here?

A. Yes, sir.

Q. Why did you get them?

A. Why did I get them?

Q. Yes, sir.

A. The information came, I do not know just how, that it was necessary to fill these reports.

[fol. 196] Q. You do not remember who brought that to your attention?

A. No, sir.

Q. Do you mean to tell the jury you had filed one of these reports and mailed it, and then called Mr. Powers over the telephone afterwards to tell him?

A. No, sir.

Q. Is that what you stated?

A. I would call him sometimes in the afternoon in time to get the orders in for the cars the next day.

Q. You stated that you knew it was necessary to fill out the report and also that you called him over the telephone every day?

A. No, sir; I did not call him over the telephone every day.

Q. How many times did you call him over the telephone?

A. I cannot tell you.

Q. Did you keep a record of it?

A. No, sir.

Q. Is that in your books?

A. No, sir.

Q. You do not know. When was it that you learned that it was necessary to file these reports?

A. I cannot give the exact date.

Q. Can you give the month?

A. No, sir.

Q. The reason I am asking you that—what is the earliest date for it? When did you begin filing these reports?

[fol. 197] A. I cannot tell you; I do not know whether they are all here.

Q. Is there any way you can tell when you began to pay ten cents to register the letters?

A. No, sir.

Q. You do not know whether you begin June, July, August or September?

A. I presume the date will show.

Q. When was the majority of this coal shipped? Was it in interstate or intrastate?

A. I cannot tell you Mr. Pryor. I can go through the book and give you the destination of each car.

Q. I do not want you to open those books again; you may look it up at recess and tell us?

A. Al-right.

Redirect examination.

Mr. Charley Evans:

Q. I understood you to state on your direct examination that the copies of the five o'clock reports you filed were all the copies you had left?

A. Yes, sir.

Q. You begin to make these reports then a very short time after the period they refused to furnish cars?

A. Yes, sir.

Q. And continued during the time they were there?

A. Yes, sir.

Mr. Pryor:

Q. He just stated that he did not remember when he [fol. 198] begin furnishing these reports.

Mr. Evans:

Q. He stated on direct examination just what I said? Did the fire destroy your books after you made these records?

A. Yes, sir.

Q. When did the fire take place?

A. I do not remember just the date of the fire.

Q. You lost a number of your records?

A. Yes, sir.

Q. Your office was in the building on the North side of the square?

A. Yes, right across from here.

Q. I will ask you to refresh you memory, if you recall the fire was on Sunday, the 20th day of August, 1922?

A. It was on Sunday, but I cannot tell you the date of the month.

Mr. Pryor:

Q. You say your record- were burned up in the fire, some of them?

A. Yes, sir.

Q. Where were those books at the time of the fire?

A. Those books were in the safe and the man that worked for me happened to get to the safe in time to get them.

Form 209—5M-11-26-B1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Thursday Date 7/7/22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Turn for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Local Mine Run Cars Can Start Mine Run	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2		None		None				None	8 No cars	100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fayetteville Coal Co. W. B. Caudle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

201

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Saturday Date 9/23/27 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Commercial Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100			None						None	8 hours/ no cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start When On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. N. C.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

202

Form 209—5M-11-26-R15

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Wednesday Date 12-13-22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100										
		2		None			None	None	None		8 no cars
											Gondola
											Jackson Span

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start With On	Place First Car Ordered This Room
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	60 M.		

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H. C. C.
AGENT COAL COMPANY

Unbilled Coal. Total cars Slack ..... Other Grades .....

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

203

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Ark. Station Number

Day of Week Monday Date Dec. 18. 1922 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Cars	Cars Furnished Today in Time for Continuous Loading: System	Foreign	Number Cars of Coal Loaded Today: Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100	2	None		None			None			8 No Cars
											Gondola

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Cars	Cars Wanted: System	Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H.B.H.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

204

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Friday Date 12/15/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Rating Asked for at 5:00 p. m. yesterday: Cars	Cars Furnished Today in Time for Continuous Loading: System	Cars Furnished Today in Time for Continuous Loading: Foreign	Number Cars of Coal Loaded Today: Company Coal	Number Cars of Coal Loaded Today: Commercial Coal	Number Cars of Coal Loaded Today: Total Cars Loaded	Number Cars of Coal Loaded Today: Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100										
		2	None		None				None		8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Rating Wanted: Cars	Cars Wanted: System	Cars Wanted: Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
100	2	any	6 am		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H. B. Caudle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

205

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-28-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Bryceburg Station Number

Day of Week Wednesday Date 12 20 22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2			None		None	None			2 No cars	100	2	any	6 ann		
											Gondola						
											Jackson Spur.						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H. L. G.
AGENT COAL COMPANY

REMARKS Received DATE 19 at M.
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

206

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Saturday Date 12-16-22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None				8 No Cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Minimum Cars Can Start Mine On	Please Fill Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.m.		

To Be Signed in Duplicate
SIGNED: Fay Coal Co. N. B. Caudle
AGENT COAL COMPANY

Unbilled Coal. Total cars Slack..... Other Grades.....

REMARKS..... Received..... 19.....at.....M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale wrights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

207

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Gaycalsior Station Number

Day of Week Monday Date 12-11 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today to Mine for Loading — System	Cars Furnished Today to Mine for Loading — Foreign	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Non-commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Hour for Cars to Start Work On	Place First Cars Before This Hour
	100	2	None		None				None		8 No Cars	100	2	Any	6 a.m.		
											Gondola						
											Jackson Spur.						

Unbilled Coal. Total cars Slack Other Grades

REMARKS Received DATE 19 at M.

To Be Signed in Duplicate
SIGNED: Fayette Coal Co.
H. B. Sandle
AGENT COAL COMPANY

AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

208

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Bryalson Station Number

Day of Week Saturday Date 12/1-1922. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Equal to Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	Railway	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Railway	Foreign (Show Initials)	
	100	2		None			280				None
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Level Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	Railway	Foreign (Show Initials)		
40	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. W. C. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

209

Form 209—5M-11 26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Friday Date 9-15-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None								8 No Cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H.C.C.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

210

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Cayce Isert Station Number

Day of Week Monday Date 12 1922 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None				None		8 No cars	100	2	any	6 a.m.		
											Gondola						
											Jackson Spurs						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H. C. Gandle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

211

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Ark. St[illegible] Number

Day of Week Tuesday Date Dec 19 1922 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None		None		8 No cars
											Gondola

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 am		

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS..... Received..... 19..... at..... M. H. B. H.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

212

Form 209—5M-11-26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Monday Date 9-11-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2				80	1	None			

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Company H. B. Caudle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

213

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Saturday Date 9/9/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2		None		None					8 no cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any			

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. N. B. Gandle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

214

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Friday Date 9/7/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None			None					8 No cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Local Mine or Cars Can Start Mine On	Place First Cars Should Be Here
Tons	Cars	System	Foreign (Show Initials)		
100	2		16		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Jay Coal Co. H. C. C.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

215

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Loyalsock Station Number

Day of Week Thursday Date 9/21/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Rating Asked for at 5:00 p. m. yesterday: Cars	Cars Furnished Today in Time for Continuous Loading: System	Cars Furnished Today in Time for Continuous Loading: Foreign	Number Cars of Coal Loaded Today: Company Coal	Number Cars of Coal Loaded Today: Non-company Coal	Number Cars of Coal Loaded Today: Total Cars Loaded	Number Cars of Coal Loaded Today: Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100	2				2280	2				
											Jackson Spur.

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Rating Wanted: Cars	Cars Wanted: System	Cars Wanted: Foreign (Show Initials)	Latest Hour for Cars Can Start When So	Place First Cars Before This Hour
	None				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

216

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Cayuelsion Station Number

Day of Week Thursday Date 9/14/22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Customers Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2	None			None					8 No Cars	100	2				

Unbilled Coal. Total cars-Black ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. N. C. C.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

217

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Monday Date 9-8-22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2	None		None				None		8 No cars	100	2	any	6 a.m.		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
H. C. C.
AGENT COAL COMPANY

REMARKS Received 19 at M.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

8-1-22

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 9/12/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None			one				None	

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Wire On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED: Fox Coal Co.
AGENT COAL COMPANY

REMARKS..... Received..... 19..... at..... M. H. L. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

619

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Saturday Date 9/16/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in This Mine for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None			None				None	80 No

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Should This Mine
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. H. B. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

220

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Lavalette Station Number

Day of Week Tuesday Date 9-19-22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Confidence Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mines at 5:00 p. m: Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	10	2			800	None					

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Latest Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
800	2	any			

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE

AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Fit the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

221

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 4/22/28 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today to Mine for Preference Loading — System	Cars Furnished Today to Mine for Preference Loading — Foreign	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Non-commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mines at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mines at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Load Mine for Cars to Start Mine on	Place First Cars Before this Hour
			22	80	None							80	a				
											Jackson Spur						

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED:

Fay Coal Co. H.G.
AGENT COAL COMPANY

REMARKS..... Received..... 19.... at..... M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

222

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 200—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 10/3 22, 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Cars	TODAY'S PERFORMANCE: Cars Furnished Today to Time for Commencing Loading — Domestic	TODAY'S PERFORMANCE: Cars Furnished Today to Time for Commencing Loading — Foreign	TODAY'S PERFORMANCE: Number Cars of Coal Loaded Today — Domestic Coal	TODAY'S PERFORMANCE: Number Cars of Coal Loaded Today — Domestic Steel	TODAY'S PERFORMANCE: Number Cars of Coal Loaded Today — Total Cars Loaded	TODAY'S PERFORMANCE: Number Cars of Coal Loaded Today — Total Tons Loaded	TODAY'S PERFORMANCE: Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Domestic	TODAY'S PERFORMANCE: Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	TOMORROW'S REQUIREMENTS: Rating Wanted — Cars	TOMORROW'S REQUIREMENTS: Cars Wanted — Domestic	TOMORROW'S REQUIREMENTS: Cars Wanted — Foreign (Show Initials)	TOMORROW'S REQUIREMENTS: Latest Hour for Cars to Start Mine to Get Them Loaded This Day	TOMORROW'S REQUIREMENTS: Place Where Cars Belong This Mine
	100	2	None	None						None	8 No cars	100	22				
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fayboal Company N.C.C.
AGENT COAL COMPANY

REMARKS Received 19 at M.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

223

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 10/12/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:00 p. m. yesterday — Tons	Rating Asked for at 1:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None					None	8 Hrs Carg	80	2				
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Co
M. C. Caudle
AGENT COAL COMPANY

REMARKS Received 19 at M.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

224

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 10-30-22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None					None	8 No cars	100	2				
										Send Gondola cars							

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. N. C. C.
AGENT COAL COMPANY

REMARKS ..... Received 11/31 1922 at 10:53M. M. A. Powers
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

225

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Thursday Date 11/23/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None					None	8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Delivered This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a m		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. N. & W.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

226

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Evarts Station Number

Day of Week Wednesday Date 11/23/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None					None	8 no cars
											Gondolas
											Jackson Spur.

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS..... Received..... 19.... at.... M. H. C. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

21

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date 11. 22. 22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None					None			8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Local Mine-run Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY
H. B. Caudle
AGENT R. R. COMPANY.

REMARKS ..... Received ..... 19 .. M.
DATE

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

228

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Empire Station Number

Day of Week Wednesday Date 12/22/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday: Tons	Cars	Cars Furnished Today in Time for Continuous Loading: Railroad	Foreign	Number Cars of Coal Loaded Today: Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100	2	None		None					None	8 no cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Cars	Cars Wanted: System	Foreign (Show Initials)	Load Number Cars Can Start When On	Place First Cars Before This Hour
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Taft Coal Co.
AGENT COAL COMPANY

REMARKS Received DATE 19 at M. H. C. Caudle
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

229

Form 209—5M-11 26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Wednesday Date 12/22/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Cars	Cars Furnished Today in Time for Continuous Loading: System	Foreign	Number Cars of Coal Loaded Today: Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100	2	None		None					None	8 no cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Cars	Cars Wanted: System	Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
100	2	any 4	6 a m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Taft Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. W. C. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Friday Date 12-24-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None			None			None		8 hrs cars
											Gondola
											Jackson Bros.

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Below This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Jay Coal
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. W. B. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

230

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company, increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 200—5M-11-26-R1606

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Wednesday Date 12/5/22 192

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2	None		None					None	8 No Cars	100	2	any	6 a m.		
											Gondola						

Unbilled Coal. Total cars Slack ..... Other Grades .....

REMARKS ..... Received ..... 19 ..... at ..... M.

DATE

To Be Signed in Duplicate
SIGNED: Fayetteville Coal Co.

AGENT COAL COMPANY

H. C. Caudle

AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

231

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Evansville Station Number

Day of Week Thursday Date 11/7/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2		None	None					None	8. No cars	100	2	any	6 a.m.		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Ev. Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. N. C. C.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located. but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

232

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Evaleen Station Number

Day of Week Friday Date 11/10/22. 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Load Minimum Cars First Start When On	Place First Cars Before This Hour
	100	2	None		None					None	8 No cars	100	2	any	6 a.m.		
											Gondola						
											Jackson Bpur.						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 .... at .... M. N.C.C.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

233

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 200—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Saturday Date 12/14/22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2	None		None				None		8. no cars	80	2				
											Jackson Spur.						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS Received 19 at M. N. & W.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutivsly for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—SM-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Engelhart Station Number

Day of Week Wednesday Date 12/6/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Cars	Cars Furnished Today in Time for Continuous Loading — System	Foreign	Number Cars of Coal Loaded Today — Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Cars	Cars Wanted — System	Foreign (Show Initials)	Least Number Cars Can Start With	Place First Cars Before This Hour
	100	2	None		None				None		8. No cars	100	2	any	6 a 24.		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

REMARKS Received DATE 19 at M.

To Be Signed in Duplicate
SIGNED: Jay Coal Co.
AGENT COAL COMPANY

R. L. Caudle
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Evansville Station Number

Day of Week Friday Date 12-8-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None				8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS..... Received..... 19..... at..... M. H. G. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

236

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Ark. Station Number

Day of Week Thursday Date Nov. 30, 1922 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None				8 No cars
											Gondola

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. H. B. H.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

237

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Ark. Station Number

Day of Week Wednesday Date Nov 29 22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Ordered This Hour
	100	2	None		None				None		8 No cars	100	2	any	6 am		
											Goudda						

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

Unbilled Coal. Total cars Slack ..... Other Grades .....

REMARKS ..... Received ..... 19 .... at .... M. H. B. H.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

238

Form 209—5M-11-26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Saturday Date Nov. 25 22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:30 p. m. yesterday: Tons	Rating Asked for at 1:30 p. m. yesterday: Cars	Cars Furnished Today In Time for Continuous Loading: System	Cars Furnished Today In Time for Continuous Loading: Foreign	Number Cars of Coal Loaded Today: Company Coal	Number Cars of Coal Loaded Today: Commercial Coal	Number Cars of Coal Loaded Today: Total Cars Loaded	Number Cars of Coal Loaded Today: Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100										
		2	None		None				None		8 Hrs car
											Gondola

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Rating Wanted: Cars	Cars Wanted: System	Cars Wanted: Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
100	2	any	6 a m		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. H. H.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11-26-R1500

COAL OPERATORS 5:00 P. M. REPORT

To Agent Loyalsock Station Number

Day of Week Monday Date Nov 27 22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None					None	8 No car
											Gondola

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. H.G.H.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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22

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville, Ark. Station Number

Day of Week Tuesday Date Nov 28/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start When Do	Place First Cars Before This Hour
	100	2	None			None			None		8 no cars	100	2	any	6 a m		
											Gondola						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS Received 19 at M. A. B. H.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

241

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Wednesday Date 11/15/22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Rating Asked for at 5:00 p. m. yesterday: Cars	Cars Furnished Today in Time for Continuous Loading: System	Cars Furnished Today in Time for Continuous Loading: Foreign	Number Cars of Coal Loaded Today: Company Coal	Number Cars of Coal Loaded Today: Commercial Coal	Number Cars of Coal Loaded Today: Total Cars Loaded	Number Cars of Coal Loaded Today: Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted: Tons	Rating Wanted: Cars	Cars Wanted: System	Cars Wanted: Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	a	None		None		None				8 No cars	100	2	any	26		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. N. L. G.
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirments Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

242

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Explosion Station Number

Day of Week Tuesday Date 11-14-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None				None		8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start When On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	26 any		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. H. Blandle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

243

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Monday Date 11/13/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left-Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None				8 no cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Below This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	boom		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. F. B. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

244

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Monday Date 11/13/1922. 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 P. M. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 P. M. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Door
	100	2	None		None				None		8 No Cars	100	2	any	Can.		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS Received 19 at M. H. L. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

245

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Jacksonville Station Number

Day of Week Friday Date 11/7/27 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Customers Loading — System	Cars Furnished Today in Time for Customers Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None		None				8 Hs Cars	100	2	any	boxes		
											Goudola						
											Jacksonville Spur						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed In Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. H. L. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P..M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located. but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

246

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Cayalaist Station Number

Day of Week Saturday Date 11/18/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None		None				8 no car
											Gondola
	1										

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a.t.s.f.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

.....
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 .... at .... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located. but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

247

Form 209—5M-11 26-R1508

COAL OPERATORS 5:00 P. M. REPORT

To Agent Everlast Station Number

Day of Week Thursday Date 11/2/1922 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. — Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None	None	None						8 Hrs Car

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. H. C. Bandle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

248

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent ..... Station ..... Number .....

Day of Week ..... Date ..... 192 ...

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 7:00 p. m. yesterday — Tons	Rating Asked for at 7:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start When So	Place First Cars Before This Hour
	100	2		None		None		None			8	100	2	any	6 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ..... M. R. L. Handle
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

249

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Thursday Date 11/3/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 1:30 p. m. yesterday — Tons	Rating Asked for at 1:30 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None				None		8 No cars	100	2	any	26/a m		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED:

Fay Coal Company
AGENT COAL COMPANY

REMARKS Received 19 at M. H. C. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located. but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale wrights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

250

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Monday Date 11/6/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None	None					None		8 No cars	100	2	any	6 a.m.		
											Goudola Cars						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS Received DATE 19 at M. H. B. Randle
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

251

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Loperdator Station Number

Day of Week Monday Date 11/8/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None				None		8 No Cars
											Goudola Cars
											Jackson Spur.

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start When On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 a m.		

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED: Fay Coal Company
AGENT COAL COMPANY

REMARKS..... Received..... 19.... at..... M. R. C. Landis
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

252

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Saturday Date 11-4-22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 2:30 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2		None	None				None		8 No Cars
									Fondale Coal		
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	2 6 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

REMARKS ..... Received ..... 19 ..... at ..... M.
DATE

To Be Signed in Duplicate
SIGNED:

Fox Coal Company
AGENT COAL COMPANY

R. C. Candle
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

53

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Thursday Date 12/6/22 192

TODAY'S PERFORMANCE

TOMORROW'S REQUIREMENTS

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)		Tons	Cars	System	Foreign (Show Initials)		
	100	2	any			any				None	8 No Cars	100	2	any	6 a m		
											Jackson Spur						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fayette Coal Company
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 .... at .... M. .....
DATE

W. G. Candle
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. File the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

254

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Charleston Station Number

Day of Week Thursday Date 12/9/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	7		None							8 No cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Load Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	any	6 any		
			Gondola		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:
Fayette Coal Company (Jackson Spur)
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. H. L. Caudle
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Carlson Station Number

Day of Week Date 2/9/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 P. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 P. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	Mine							8 No Cars	100	2	any	6 a m		
										Gondola						

To Be Signed in Duplicate

SIGNED: Fay Coal Co.

AGENT COAL COMPANY

Unbilled Coal. Total cars Slack Other Grades

REMARKS Received 19 at M. W. C. Caudle

DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale wrights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11-26-R1506

COAL OPERATORS' 5:00 P. M. REPORT

To Agent Eyeland Station Number

Day of Week Friday Date 1/22-1922. 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 3:00 p. m. yesterday — Tons	Rating Asked for at 3:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
		100	2	None							8 Cars	100	2		any C. & O.		
															Gondola		
											Jackson Spur						

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 .... at .... M. W. C. Caudle
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Lovelace Station Number

Day of Week Saturday Date 12/23 1922

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 3:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2			None						8 No cars
											Gondola
											Jackson Spur

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2		600 a.m.		

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fox Coal Company
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale wrights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

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Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Evaleen [illegible] Number

Day of Week Saturday Date 9/14/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None				None		8 No Cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack..... Other Grades.....

To Be Signed in Duplicate
SIGNED:

Taylor Coal Co. by H.B.B.

AGENT COAL COMPANY

REMARKS..... Received..... 19.... at.... M.

DATE

AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday; Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

259

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Wednesday Date 9/12/23 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Cars	Cars Furnished Today in Time for Continuous Loading — System	Foreign	Number Cars of Coal Loaded Today — Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Cars	Cars Wanted — System	Foreign (Show Initials)	Least Number Cars Can Start When Be	Place First Cars Delivery This Hour
	100	2	None		None						8 No Cars	100	2	any			
					part car and treat off end of until												

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co. H. C. C.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

290

Form 209—5M-11-26-R1506.

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Friday Date 9/15 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 2:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100										
		2		None							8 No Cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:
Tom Goodlee
H. E. Carlile
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M. .....
DATE
AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not avaliable for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

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TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

261

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Wednesday Date 9/6/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None		None					None	No cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mine On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2	Any			

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:
Fayette Coal Co. H. C. Caudle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements . Phone report will be taken from mines remotely located. but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

262

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayette Station Number

Day of Week Tuesday Date 9/5/22. 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 1:00 p. m. Yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start When On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fay Coal Co. by H.G.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ... at ... M.
DATE

AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

263

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Monday Date 9/25/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday		Cars Furnished Today in Time for Continuous Loading		Number Cars of Coal Loaded Today				Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car		NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	Tons	Cars	System	Foreign	Company Coal	Commercial Coal	Total Cars Loaded	Total Tons Loaded	System	Foreign (Show Initials)	
	100	2	None				None				8 No cars

TOMORROW'S REQUIREMENTS

Rating Wanted		Cars Wanted		Least Number Cars Can Start Mines On	Place First Cars Before This Hour
Tons	Cars	System	Foreign (Show Initials)		
100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

264

Form 209—3M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Fayetteville Station Number

Day of Week Tuesday Date 9/6/22 192

TODAY'S PERFORMANCE

NAME AND NUMBER OF MINE	Rating Asked for at 5:00 p. m. yesterday: Tons	Rating Asked for at 5:00 p. m. yesterday: Cars	Cars Furnished Today in Time for Dumbarton Loading: System	Cars Furnished Today in Time for Dumbarton Loading: Foreign	Number Cars of Coal Loaded Today: Company Coal	Number Cars of Coal Loaded Today: Commercial Coal	Number Cars of Coal Loaded Today: Total Cars Loaded	Number Cars of Coal Loaded Today: Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car: Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN
	100	2		None							
							(Car illegible pencil notation was made here)				

TOMORROW'S REQUIREMENTS

Rating Wanted: Tons	Rating Wanted: Cars	Cars Wanted: System	Cars Wanted: Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED: Fay Coal Co.
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 ..... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

265

Form 209—5M-11-26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Tuesday Date Dec 13-22. 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2	None		None					None	8 No cars	100	2	any	6 a.m.		
											Gondola						

To Be Signed in Duplicate
SIGNED: Fay Coal Co. By H.B.H.
AGENT COAL COMPANY

Unbilled Coal. Total cars Slack ..... Other Grades .....

REMARKS ..... Received ..... 19 .... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M. daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

6992

Form 200—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Cleveland Station Number

Day of Week Thursday Date 12, 14, 22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST, WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Please Have First Cars Before This Hour
	100	2	None		None				None		8 No Cars.	100	2		6 a.m.		
											Gondola						
											Jackson Spur						

Unbilled Coal. Total cars Slack Other Grades

To Be Signed in Duplicate
SIGNED: Fay Coal Company, By H. L. G.
AGENT COAL COMPANY

REMARKS Received 19 at M.
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. File the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

192

Form 209—5M-11 26-R1506

COAL OPERATORS 5:00 P. M. REPORT

To Agent Excelsior Station Number

Day of Week Thursday Date 9/7/22 192

NAME AND NUMBER OF MINE	TODAY'S PERFORMANCE: Rating Asked for at 5:00 p. m. yesterday — Tons	Rating Asked for at 5:00 p. m. yesterday — Cars	Cars Furnished Today in Time for Continuous Loading — System	Cars Furnished Today in Time for Continuous Loading — Foreign	Number Cars of Coal Loaded Today — Company Coal	Number Cars of Coal Loaded Today — Commercial Coal	Number Cars of Coal Loaded Today — Total Cars Loaded	Number Cars of Coal Loaded Today — Total Tons Loaded	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — System	Empty Cars Left Over in Mine at 5:00 p. m. Two Pieces to Count One Car — Foreign (Show Initials)	NUMBER OF HOURS WORK LOST WITH CAUSE OF SHUT DOWN	TOMORROW'S REQUIREMENTS: Rating Wanted — Tons	Rating Wanted — Cars	Cars Wanted — System	Cars Wanted — Foreign (Show Initials)	Least Number Cars Can Start Mine On	Place First Cars Before This Hour
	100	2		None		None					8 no cars	100	2				

Unbilled Coal. Total cars Slack ..... Other Grades .....

To Be Signed in Duplicate
SIGNED:

Fay Coal Co. H C Caudle
AGENT COAL COMPANY

REMARKS ..... Received ..... 19 .... at ..... M. .....
DATE AGENT R. R. COMPANY.

INSTRUCTIONS TO COAL OPERATORS—This report must be properly filled out, numbered consecutively for each week, and handed to the R. R. Agent by 5:00 P. M daily, except Sunday: Saturday's report covering Monday's requirements. Phone report will be taken from mines remotely located, but signed copy must be furnished promptly as possible. Under head of "TODAY'S PERFORMANCE" use the rating you asked for the day before, and under head of "TOMORROW'S REQUIREMENTS" fix such rating as you can reasonably load, keeping inside the published maximum shown in bulletin book. It is not to your interest to order cars you cannot load. When scale weights are not available for completion of this report add five per cent to the capacity weight. Failure to return this report promptly and accurately will result in R. R. Company furnishing no cars for next day's loading. Show initials of foreign cars and count two pieces on hand as one whole empty car, one piece on hand not to be counted. Show cause of shutdowns plainly, with time lost from each cause. Sign your report, retaining tissue or carbon copy for your record.

TO AGENTS—If this report is not furnished, show mine on 21 Report as suspended account no report. Enter all reports received on 21 Report, wiring total of your district to Coal Agent at 6:00 P. M. daily. Pin the reports of each mine for each period together and mail to Coal Agent on 8th, 15th, 22nd and 1st day of month.

892

TO ALL CONCERNED—See that cars moving in same direction are billed together, saving delay in switching, and load all cars to maximum capacity. This item is of vital importance to coal and railroad company increasing both car supply and revenue. Report unbilled coal in space provided for same.

RECEIPT FOR REGISTERED ARTICLE NO. 191 11-1 3, 1922

From Ark Valley Coal Co. 1 class postage paid.

Addressed to M. G. Powers, agt. M. & A. Co. Excelsior Ark

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per W T

GREENWOOD, ARK. NOV 3 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 164 11-2, 1922

From Ark Valley Coal Co 1 class postage paid.

Addressed to M G Powers Agt M & A Co Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per Bell

GREENWOOD, ARK. NOV 2 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 169 11-3-22

From Ark Valley Coal Co. 1 class postage paid.

Addressed to M. G. Powers Agt M.V. Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per W. T.

GREENWOOD, ARK. NOV 3 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 168 11-3, 1922

From Ark Valley Coal Co. 1 class postage paid.

Addressed to M G Powers Agt M & A Co Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per Bell

GREENWOOD, ARK. NOV 3 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 172 11/6, 1922

From Ark Valley Coal Co 1 class postage paid.

Addressed to M G Powers Agt M & A Co Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per Bell

GREENWOOD, ARK. NOV 6 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 186 11-10, 1922

From Ark. Valley Coal Co. ..... class postage paid.

Addressed to R. G. Powers Agt. M. V. & Excelsior Ark

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per W. T.

GREENWOOD, ARK. NOV 10 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 196 11-15, 1922

From Ark Valley Coal Co. ..... class postage paid.

Addressed to R. G. Powers Agt Excelsion Ark

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per W. T.

GREENWOOD, ARK. NOV 15 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 194 11-14, 1922

From Ark Valley Coal Co. ..... class postage paid.

Addressed to R. G. Powers, Agt. M. V. R. R. Excelsior Ark

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per W T

GREENWOOD, ARK. NOV 14 1922

RECEIPT FOR REGISTERED ARTICLE NO. 218 ....., 19

From Ark. Valley Coal Co ..... class postage paid.

Addressed to Mr R. G. Powers Agt M V R Rd. Excelsior Ark

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per P H

POSTMARK NOV 21 1922

RECEIPT FOR REGISTERED ARTICLE NO. 215 11/20, 1922

From Arkansas Valley Coal Co ..... class postage paid.

Addressed to Mr. R. G. Powers, Agt. Excelsior Ark. M. V. R. Co.

Return receipt desired .....

Delivery restricted { To addressee in person ..... / To addressee or order ..... } Postmaster, per P. H

GREENWOOD, ARK. NOV 20 1922 REGISTERED

270

272

RECEIPT FOR REGISTERED ARTICLE NO. 217 11/21, 1922

From Arkansas Valley Coal Co ..... class postage paid.

Addressed to Mr. R. H. Powers Agt
M.V.R.R.Co. Excelsior Ark

Return receipt desired .....

Delivery restricted { To addressee in person .....
To addressee or order ..... Postmaster, per [illegible]

NOV 1922 POSTMARK

RECEIPT FOR REGISTERED ARTICLE NO. 225 11/22, 1922

From Ark. Valley Coal Co. ..... class postage paid.

Addressed to Mr R. H. Powers Agt
M.V.R.R.Co. Excelsior Ark
R. 2

Return receipt desired ✓

Delivery restricted { To addressee in person .....
To addressee or order ..... Postmaster, per O.H.

NOV 22 1922 POSTMARK

RECEIPT FOR REGISTERED ARTICLE NO. 226 11/22, 1922

From Ark Valley Coal Co ..... class postage paid.

Addressed to R. H. Powers Agt
M.V.R.R.Co. Excelsior Ark
R 2

Return receipt desired ✓

Delivery restricted { To addressee in person .....
To addressee or order ..... Postmaster, per O.H

NOV 22 1922 POSTMARK

RECEIPT FOR REGISTERED ARTICLE NO 241 11/28, 1922

From Ark. Valley Coal Co ..... class postage paid.

Addressed to R. H. Powers Agt. M.V.R.R.Co
Excelsior, Ark

Return receipt desired ✓

Delivery restricted { To addressee in person .....
To addressee or order ..... Postmaster, per O.H

GREENWOOD, ARK. NOV 28 1922 POSTMARK

RECEIPT FOR REGISTERED ARTICLE NO. 260 12-7-1922

From Ark Valley Coal Co ..... class postage

Addressed to R. H. Powers
Agt. M.V.R.R. Excelsior
Ark

Return receipt desired .....

Delivery restricted { To addressee in person .....
To addressee or order ..... Postmaster, per U.P.

GREENWOOD, ARK. DEC 7 1922 POSTMARK

271

RECEIPT FOR REGISTERED ARTICLE NO. 261 12-7, 1922

From Ark. Valley Coal Co — class postage paid.

Addressed to R. G. Powers Agt
Ex Nelson Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per W T.

DEC 7 1922

RECEIPT FOR REGISTERED ARTICLE NO. 264 12-8, 1922

From Ark Valley Coal Co — class postage paid.

Addressed to R. G. Powers Agt
Ex Nelson Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per W T

POSTMARK DEC 8 1922

RECEIPT FOR REGISTERED ARTICLE NO. 260 12/8, 1922

From Ark Valley Coal Co — class postage paid.

Addressed to R. G. Powers Agt.
Ex Nelson Ark Agt.

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per W T

POSTMARK DEC 8 1922

RECEIPT FOR REGISTERED ARTICLE NO. 269 12/11, 192✓

From Ark Valley Coal Co — class postage p

Addressed to R. G. Powers Agt
Ex Nelson Ark
City

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per Bell

NEWCO DEC 11 1922

RECEIPT FOR REGISTERED ARTICLE NO. 273 12/12, 192✓

From Ark Valley Coal Co — class postage p

Addressed to R. G. Powers
Ex Nelson City

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per Bell

POSTMARK DEC 12 1922

212

RECEIPT FOR REGISTERED ARTICLE NO. 248 12/3, 1922

From Ark Valley Coal Co, class postage paid.

Addressed to R J Powers
Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per Bell

POSTMARK DEC 3 1922 GREENWOOD, ARK.

RECEIPT FOR REGISTERED ARTICLE NO. 255 12/5, 1922

From Ark Valley Coal Co, class postage paid.

Addressed to R J Powers Agt
Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per Bell

GREENWOOD, ARK. DEC 6 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 256 12/6, 1922

From Ark Valley Coal Co, class postage paid.

Addressed to R J Powers Agt
Excelsior Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per Bell

GREENWOOD, ARK. DEC 6 1922 REGIS

RECEIPT FOR REGISTERED ARTICLE NO. 275 12-12, 1922

From Arkansas Valley Coal Co, class postage paid.

Addressed to Mr. R. J. Powers Agt. M.V.R.R. Co
Excelsior, Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ✓ / To addressee or order ____ } Postmaster, per P. M.

POSTMARK DEC 1922

RECEIPT FOR REGISTERED ARTICLE NO. 319 12/21, 1922

From Ark Valley Coal Co, class postage paid.

Addressed to R J Powers Agt MVRy
R 2 Greenwood Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ____ / To addressee or order ____ } Postmaster, per WT

POSTMARK DEC 21 1922 GREENWOOD, ARK.

RECEIPT FOR REGISTERED ARTICLE NO. 324 12/22, 1922

From Ark. Valley Coal Co. class postage paid.

Addressed to R. H. Powers agt. M. V. Ry Co. Excelsior R 2 Greenwood Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per WT

POSTMARK DEC 22 1922

RECEIPT FOR REGISTERED ARTICLE NO. 284 12-13, 1922

From Arkansas Valley Coal Co class postage paid.

Addressed to Mr. R. H. Powers agt. M. V. R.R. Co. Excelsior Ark.

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per O.N.

POSTMARK

RECEIPT FOR REGISTERED ARTICLE NO. 288 12-14, 1922

From Ark. Valley Coal Co. class postage paid.

Addressed to R. H. Powers Agt. M. V. Ry Co. Greenwood Ark. R 2

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per W.T.

DEC 14 1922

RECEIPT FOR REGISTERED ARTICLE NO. 292 12-15, 1922

From Ark. Valley Coal Co. class postage paid.

Addressed to R. H. Powers Agt. M. V. Ry Co. Greenwood Ark R 2

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per WT

GREENWOOD, ARK. DEC 15 1922 REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 293 12-18, 1922

From Ark. Valley Coal Co. class postage paid.

Addressed to R. H. Powers agt. M. V. Ry Co. R 2 - Greenwood Ark

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per W.T.

GREENWOOD, ARK. DEC 18 1922

RECEIPT FOR REGISTERED ARTICLE NO. 308 12-19, 1922

From Ark Valley Coal Co. class postage paid.

Addressed to Mr R H. Powers agt M.V.R.R. Co. R 2 Greenwood Ark.

Return receipt desired ✓

Delivery restricted { To addressee in person ___ / To addressee or order ___ } Postmaster, per O N

POSTMARK

274

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

M G Power
(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery, 11-2, 1922

Form 3811

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

M G Power
(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery, 11-3, 1922

Form 3811

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

M G Power
(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery, 11-4, 1922

Form 3811

RETURN RECEIPT.

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R G Parsons
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R G Powers
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W T Hall
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C5—6116

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R G Powers
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Mrs R G Powers
(Signature of addressee's agent.)

Date of delivery, 12-14 1922

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C5—6116

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R G Powers
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R G Powers
(Signature of addressee's agent.)

Date of delivery 12-15 1922

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Date of delivery, 12-23, 1922

Form 3811

Q. But did not get the others?
A. Some he did not get out of the safe.

[fol. 199] Mr. Pryor: Do you want to read the agreement referred to that was marked Exhibit "B."

Exhibit "B" was read to the jury.

[fol. 200] W. C. Caudle, being recalled, testified as follows:

Mr. Pryor:

Q. Did you examine your records with reference to the shipment of coal?
A. Yes, sir.
Q. What per cent of the coal was shipped in interstate?
A. I did not figure out the per cent, I would estimate it to be about 65% or 70% moved outside of the State enroute to points outside of the State.

Here the plaintiffs rested their case.

Here the tickets and papers referred to were marked Exhibit "C" and read in evidence as follows:

Exhibit "C" to Testimony of Caudle

(Here follows coal operators' reports, etc., marked side folio pages 201 to 281, inc.)

[fol. 282] Thereupon the defendant in order to maintain the issues upon its part, introduced the following testimony, to-wit:

Defendant's Testimony

W. C. Doctroman, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. State your name?
A. W. C. Doctroman.

Q. Where do you live?
A. Huntington.
Q. What is your occupation?
A. Miner by occupation.
Q. How long have you been in the mining business?
A. Between thorty-three and thirty-four years.
Q. Are you acquainted with what is known as the Fax Coal Company's mine?
A. Yes, sir; I worked there a while.
Q. How long did you work there?
A. I guess six weeks, between six weeks and two months.
Q. Did you own the mine at one time?
A. I owned stock in it, yes, sir.
Q. From whom did you purchase the mine?
A. My associates, I was not with them when they purchased it. At the time. They purchased it from Mr. Burnett and Mr. Barkley, I believe.
[fol. 283] Q. From whom did you purchase it?
A. At what time?
Q. What time, yes, sir; and from whom?
A. It wss about Christmas 1922, between Christmas and the first of the year, I cannot say the exact date.
Q. That you purchased?
A. The other parties purchased. They purchased for me, I was not with them when they closed the contract.
Q. Who was associated with you in that purchase?
A. Henry Freeman, Claude Spiegal, Jim Harrison, W. A. Kelley, Robert Fax and Bob Fox.
Q. How many altogether?
A. Supposed to be ten of us.
Q. You state that you did not operate the deal yourself?
A. No, sir; I did not.
Q. Do you know what they paid for it?
A. The contract was closed; paid them $500 for it.
Q. Five Hundred Dollars?
A. Paid them five hundred dollars for it, yes, sir.
Q. That was the agreement then?
A. Made in writing.
Q. Did you undertake the operation of the mine after that?
A. Yes, sir; but we did not operate the mine until such time it took to build a tram road and tipple.

Q. Why did you build a tram road and tipple?

[fol. 284] A. Because we did not think it was profitable to use it for a wagon load mine. It was about a quarter of a mile and we would have to pay about 50¢ a ton to haul it, and we figured we could build a tram and put it there cheaper than that.

Q. Would it be cheaper to operate the mine with a tram?

A. Yes, sir; in my opinion it would be.

Q. How long were you connected with the operation of that mine?

A. Between six weeks and two months.

Q. Could you operate it profitable even with a tram?

A. We did not make any money out of it.

Q. Why?

A. Because in my opinion there wasn't sufficient working space to start with, and we could not work a sufficiently amount of the mine to make any money out of it.

Q. What was the condition when you took hold of the mine with reference to the inside working?

A. We found on going ovee there, found a slope and found the rooms turning off the slope right and left and you know what that means. Didn't have any fan and there was not any fan shaft and wasn't any fan and didn't look like there had been any furnace to ventilate the mine; if there had been any furnace under there I could not distinguish it, but I will not say there had not been, and it [fol. 285] required the pump to run about four hours a day to keep the water out in the extreme lower part and in the upper part we were not bothered with water, and we were on the right hand side of the slope on the East side, as we call it they had a — down against a fault of some kind.

Q. What do you mean by — along down by the side of the fault?

A. Take the coal away from it; work the coal away from it it would pay and in some places they did that. They had not punctured the fault anywhere as I could see. So we put all the coal we had there on the west side of the slope in the bottom of the slope.

Q. What time was it that you took charge of it?

A. Personally?

Q. No, sir; bought in there?

A. Somewhere between the 25th of December 1922, and the first of January, 1923. I cannot be positive as to the time.

Q. You and your associates purchased that mine from the plaintiffs in this case?

A. Yes, sir.

Q. When was it that you went to work?

A. I did not go to work in the mine, none of us, until such time as we built a tram road and tipple, and we went to work over there about the first or 3rd day of January, 1923. [fol. 286] Q. How much coal was available that could have been loaded out of the mine at that time?

A. My recollection is that we got somewhere around six flats out of the mine that was open. I mean we got that much out of the abandoned part of the mine and punctured part of the fault.

Q. Do you mean to tell the jury that the time you purchased if there was no coal available in the mine except six cars of coal?

A. That is about all we could get.

Q. All that you could get without going through the fault?

A. Yes, sir. We could have driven this slope further down at a great expense of handling water.

Q. How far down was the slope driven?

A. I expect it was possibly four hundred feet, I am not positive, I did not measure it, somewhere around there.

Q. Tell the jury the size and character of the fault you speak of in this mine?

A. I can only do that in the part we went through. I do not know anything about the rest of it. While we went through my recollection serves me it was possibly fifteen feet through it but we did not hit the coal we started to drive through on the level, the coal we had been working on from the slope. We did not find any coal after driving fifteen or sixteen feet so we sunk the hole and decided that [fol. 287] the coal was either above or below us; it sometimes happens in such cases. We sunk down on top of it; and we started down on top of the coal and then went back.

Q. There was no way of telling how much work would be needed in going through that fault?

A. No, sir. I cannot state anything about it, you have to go through it and you cannot tell about it until you get through it.

Q. Could the mine have been operated after the removal of those six cars of coal you speak of, without going through this fault?

A. Not at a profit. No, sir; not in my opinion.

Q. You say you have been engaged in mining coal for thirty-three years?

A. Yes, sir.

Q. From your experience as a practical coal miner could that mine, in the condition it was in, have been successfully operated at a profit as a wagon loading mine?

A. I do not think so; in my judgment it could not be, not at the price paid for coal on the market at the time.

Q. Why could it not have been operated at a profit?

A. Well from the very fact that the coal was not there, in the first place.

Q. The coal was not there, is that what you said?

A. Yes, sir.

[fol. 288] Q. Was there any other reason in the cost of the production of the coal?

A. What?

Q. Was there any items in connection with the production of the coal as a wagon loading mine that rendered it unprofitable?

A. I do not hardly think so.

Q. You had to pay how much a ton royalty?

A. 30¢.

Q. Who did you pay royalty to?

A. Mr. C. C. Woodson; the party that had the last lease.

Q. Did he have the royalty reduced?

A. If he did, I did not know about it.

Q. You only paid 30¢ royalty?

A. 30¢, is what we paid.

Q. Was that mine developed in accordance with the laws of the State with reference to the development of coal mines?

Mr. Evans: We object to that for that is assuming that he knows what the laws of the State are.

Mr. Pryor:

Q. Do you know what the laws of the State require with reference to development of coal mines?

A. I think so.

Q. Was that mine developed in accordance with the laws of the State?

A. Not according to what the laws are now.

Q. With what the laws were at that time?

[fol. 289] A. I do not know just how long the place had been opened. I do not know whether that place was opened prior to the passage of the last mining laws or not.

Q. Do you know when the last mining laws were passed?

A. It strikes me along about the 15th or 16th; I will not be positive about that.

Q. Assuming that they had begun the development work in 1920, then it is in accordance with the laws of the State?

A. Not at that time in 1921.

Q. Or in 1920?

A. No, sir.

Q. I wish you would go ahead and state how it was developed and how it should have been developed?

A. They had a slope driven and rooms turning right and left off of it. This slope we operated was a new slope, and it seems that there had been another slope driven down prior to the time we took hold of the property but it was not being used at the time.

Q. It had been abandoned and the new slope turned to the left and driven down to the old slope left there and used it as an air course.

Q. There wasn't any air course?

A. None except that cross cut going between the rooms.

Q. There was no fan there?

A. No fan.

[fol. 290] Q. And no evidence of any furnace?

A. I did not see where there had ever been a fan there.

Q. The croppings were driven off the main slope?

A. Driven off the main slope, yes, sir.

Cross-examination.

Mr. Charley Evans:

Q. How long were you connected with that mine?
A. Between six weeks and two months; I worked there that long but had stock there longer than that.

Mr. Pryor:

Q. Did you sell out your interest in it afterwards?
A. I sold my stock to another party.
Q. Who to?
A. Mr. Whisenhut.
Q. How much did he give for it?
A. One hundred dollars.

Mr. Charley Evans:

Q. During the time you worked there did they pump the water out of the main slope?
A. Pumped water there about four hours a day.
Q. Did they pump the water out of the other slope?
A. They pumped some water out of the main slope.
Q. Did they pump all the water out?
A. I do not know whether they did or not.
Q. So far as you know they did not?
A. So far as I know they did not; I do not think they did. You can substantiate that by some other witness, so far as [fol. 291] I know we did not work the main slope at all.
Q. So what you know about that mine the work that they done there was not in the main slope?
A. No.
Q. You do not know anything about the main slope?
A. Yes, I went down there and have been all over the mine, and worked.
Q. What slope did you work in while there?
A. That slope; worked a room off this slope.
Q. A room off the little slope there?
A. Yes, sir.
Q. You say you loaded some coal on the West side of the slope you are speaking of the little slope?
A. I am speaking of the slope there where we bought the property.

Q. How much property west of that?

A. We taken up everything we could get there; my recollection is we loaded six flat cars of coal.

Q. You found the coal four feet below when you went through the fault?

A. Yes, four feet below.

Q. You stated, in your judgment the mine could not be operated at a profit during this time, what time were you speaking of?

A. Before they went through the fault.

Q. In 1923?

A. Yes, in 1923.

Q. You did not think the mine could be operated at a [fol. 292] profit until you got through the fault?

A. There had to be something done; and we did not know that we could find any until we prospected sufficiently to find out.

Q. Did you know there was two or three prospect holes through there?

A. I did not know about them.

Q. You went down four feet and found it?

A. Yes, after driving in about fifteen or sixteen feet.

Mr. Pryor:

Q. How long did you work in the mine?

A. About six weeks and maybe a little more.

Q. Six weeks?

A. Yes, six weeks or two months.

Q. How much did you get a day?

A. Got $7.29 each day while I worked in the mine.

Q. That is what was allowed you?

A. Yes, sir.

Mr. Evans:

Q. Was that the market at that time?

A. Yes, sir, for coal being dug by the day.

Q. Was that the market at that time?

A. Yes, sir.

[fol. 293] HENRY FREEMAN, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?
A. Henry Freeman.
Q. Where do you live?
A. Huntington, Arkansas.
Q. How long have you lived there?
A. Something like fifteen years.
Q. What is your occupation?
A. Miner.
Q. How long have you been in the business.
A. About twenty-five years.
Q. In the coal mining business?
A. Yes, sir.
Q. How old are you?
A. Forty-two years old.
Q. Are you acquainted with what is known as the Fax Coal Company's mine in Midland?
A. Yes, sir.
Q. Did you ever own an interest in that mine?
A. Yes, sir.
Q. When did you acquire an interest in that mine?
A. In 1922, along the latter part of 1922.
Q. Was there any one associated with you in the purchase of the mine?
A. Yes, nine of us altogether.
Q. From whom did you buy the mine?
[fol. 294] A. Mr. Barcley and Mr. Burnett.
Q. What did you pay for it?
A. Seven hundred dollars, I believe.
Q. Seven hundred or seven-hundred and fifty?
A. Seven hundred, I believe.
Q. What was the condition you found the mine in. Tell the jury in your own words. Did you examine the mine when you bought it?
A. Yes, sir.
Q. State to the jury the condition it was in?
A. Inside of the mine?
Q. Yes, sir.

A. Well there was something like five flats of coal we loaded and then went through a fault.

Q. Was that all the coal there was available in the mine after going through the fault, five flats?

A. That was all that there was that amounted to very much.

Q. Did you mine out of there?

A. Yes, sir.

Q. What sort of mine was it, at the time you bought it?

A. It was a slope.

Q. How was it operated—by a tipple?

A. It was pulled out to the tipple and dumped.

Q. Was it a wagon haul mine?

A. It was a wagon haul mine when we got it.

Q. What did you do after you got it.

A. Put in a tram.

[fol. 295] Q. Why did you put in a tram?

A. We thought that was the best way to get to the railroad.

Q. Was it cheaper to work it that way than to wagon haul?

A. Yes, sir.

Q. How much interior had the mine when developed?

A. Wasn't very much interior to it when we took it; it was practically worked out. It was on the outside of the fault.

Q. You don't know whether any prospecting had been done to determine the extent of the fault?

A. Yes, there was a place where there had been prospecting done.

Q. Do you know who had done the prospecting?

A. No, sir; I do not.

Q. State to the jury what you did, and what was necessary to be done, in order to get through the fault?

A. We had to grade quite a bit to get a grade to get into it. Had to go back and grade up, I guess forty feet.

Q. Did you know where you were going to strike the coal, whether above or below?

A. About the time we started to grade we did, prospected down and found the coal.

Q. Then you began to grade?

A. Yes, sir.

[fol. 296] Q. How much grading did you have to do?
A. Something like forty feet.
Q. What was the character of the grading for the forty feet, rock dirt or clay?
A. It was rock, hard rock, blasted out the rock.
Q. It was rock?
A. Yes, sir.
Q. You had to go through it for a distance of forty feet?
A. Yes, sir.
Q. How had the mine been developed inside as to air courses?
A. There is a room drove off that.
Q. Driven off the main slope?
A. Yes, sir.
Q. There were no cross entries in the mine?
A. No, sir; just room work.
Q. There was no fan there?
A. No, sir.
Q. Did you finally find the coal up or down?
A. Down.
Q. How far down?
A. Something like six feet.
Q. Did you state how long you owned an interest in the mine?
A. I don't know how long it was. I did not pay any attention.
Q. Did you remain with the mine until W. C. Doctroman sold his interest?
[fol. 297] A. Yes, we sold out together.
Q. You all sold together?
A. Yes, all but one, I believe; eight of us together.
Q. Who did you sell to?
A. Mr. Hall and Mr. Graham.
Q. I will ask you what price you received for your interest in it?
A. I believe nine hundred dollars.
Q. Why did you sell?
A. We were not getting along with it very good.
Q. Did you make a profit out of the operation of the mine?
A. No, sir.
Q. You did not have any trouble about cars?

A. No, sir.
Q. You got all the cars you wanted?
A. All we wanted.
Q. And still you could not operate the mine at a profit?
A. No, sir.
Q. And you were all practical miners?
A. Supposed to be.

Cross-examination:

Q. You say you went out when Mr. Doctorman went out?
A. Yes, sir.
Q. You worked there during the time he worked there?
A. Yes, sir.
Q. The slope you were speaking about is the one they were working in at the time you bought it, is that correct?
[fol. 298] A. Yes, sir.
Q. You did not pump the water out of the mine's main slope?
A. Not the old slope, worked some rooms around it.
Q. You did not pump the water out of the main slope?
A. No, sir.
Q. The testimony you are giving in regard to the inside of the mine is, the condition of this little slope you are speaking of they were working in when you went there?
A. Yes, sir.
Q. You did not pump the water out of the main slope, and you don't know whether they had an air course there?
A. Not down there.
Q. You don't know about that?
A. No, sir.
Q. You say there were nine of you gentlemen?
A. That bought it out, yes, sir.
Q. Nine all told?
A. Yes, sir.
Q. And paid seven hundred dollars for it?
A. Yes, sir.
Q. Had you operated a mine before that?
A. Yes, sir.
Q. How much experience had you had in operating a mine?
[fol. 299] A. I had quite a bit.

Q. Most of the time you have been just mining for the regular scale?

A. Most of the time I did.

Q. You gentlemen did not put in any fan or anything of that kind?

A. No, sir.

Q. You worked it just like it was, and the testimony you are giving as to the inside condition of the mine is this little slope that you worked while you were there?

A. Yes, sir.

Mr. Pryor:

Q. The mine slope was an abandoned slope?

A. It was a little slope drove straight down.

Q. It had been abandoned, the entire slope driven off of that?

A. Turned off the left a little bit.

Q. Do you know why the slope had been abandoned?

A. No, sir; I do not.

Q. It had been abandoned when you bought the mine?

A. Yes, sir.

Q. That is, the slope that was filled with water?

A. Yes, sir.

Q. Could you tell whether it had been worked in there for some time?

A. No, sir; I did not go down in it; it was full of water.

[fol. 300] Q. It showed that it had been abandoned?

A. Yes, sir.

Mr. Evans:

—. It did not show it had been abandoned; it was full of water.

A. It was not worked at all.

Q. It filled up with water?

A. Yes, sir.

[fol. 301] Jim Harrison, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?

A. Jim Harrison.

Q. Where do you live?

A. Mansfield.

Q. How long have you lived in Sebastian county?

A. Since 1881.

Q. What is your business?

A. I have been engaged in farming most of my life.

Q. Have you ever been engaged in the coal mining business?

A. A little, yes, sir.

Q. Where did you work in the coal mine?

A. There near Montreal.

Q. Did you buy any interest in that mine?

A. Yes, sir.

Q. Who did you buy it from?

A. Barkley and Burnett.

Q. These two gentlemen here?

A. Yes, sir.

Q. Were you a member of the company that bought it?

A. Yes, sir.

Q. Who were your associates in that purchase?

A. Mr. Doctorman, Freeman, Speagal, and a couple of the Fox boys. And Mr. Albert Kelley.

[fol. 302] Q. Did you work in the mine yourself?

A. No, sir; I did not work inside.

Q. Did you work on top?

A. Yes, sir.

Q. How much did you give for your interest in the mine?

A. My recollection is that the consideration was seven hundred dollars all told.

Q. What outside improvements did you make on it, if any?

A. Well, the first thing we did, we built a little boiler house wash shanty.

Q. There was not any boiler house or wash shanty there?

A. Well, there was a little shanty but enlarged it and made a little more room and then built a tram.

Q. What was the length of the tram you built?

A. I do not know exactly, but about a quarter of a mile.

Q. Why did you build a tram?

A. We thought it was to our advantage to do that is the thing that prompted us to.

Q. In what respect—to reduce the cost of operating the mine?

A. To reduce the cost of operating the mine, in the operation of the little mine; it was a wagon-haul place up to this time.

Q. Did you sell out at the time Mr. Doctorman sold out?

A. No, sir; I sold out before him; I think it was within about two and a half or three months, something like that.

Q. To whom did you sell out?

[fol. 303] A. Mr. Charlie Fox.

Q. You don't know anything about the inside condition of the mine?

A. Nothing particularly. I was in the place two or three times first and last, but I was not experienced on the inside and did not know much about it.

Cross-examination.

Mr. Charley Evans:

Q. You sold out before the others did?

A. Yes, sir.

Q. What was the cause of your selling out?

A. I got sick and was sick two or three weeks, and Mr. Fox wanted to buy my share.

Q. Did he have a share in it then?

A. No, sir; but his brother had.

Q. And he wanted your share?

A. Yes, sir.

Q. You testified in this case before?

A. Yes, sir.

Q. I will ask you if you did not testify that there was some friction between the men that owned it?

A. Well, if I remember correctly, I made the statement that they got up a little hard feelings between some of the men but nothing to make a disturbance that I know of.

Q. Is that the truth, that there was hard feelings and dissension and trouble?

[fol. 304] A. No trouble, no.

Q. What do you mean by trouble?

A. Just a little dissatisfaction.

Q. Didn't get along?

A. A man might gather that idea, but I never heard of any quarreling or fussing.

Q. Not satisfactory?

A. Not altogether on my part, I can say.

Q. It was entirely satisfactory on your part?

A. No.

Q. Did you get pay for your work while there?

A. I got a pro rata share of the proceeds I suppose; Mr. Speagle was our manager.

Q. Did you get pay by the day or do you recall?

A. We divided the spoils of what we got.

Q. Split the money between you?

A. Yes, sir.

Q. What did you sell your share for?

A. One hundred dollars.

Mr. Pryor:

Q. Divided the spoils, was there much spoils to divide?

A. I did not get very much.

Q. Claude Speagle was the manager of it?

A. Yes, sir.

[fol. 305] Claude Speagle, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. State your name?

A. Claude Speagle.

Q. You living in Fort Smith?

A. Yes, sir.

Q. What is your occupation?

A. Mining.

Q. How long have you been engaged in the coal mining business?

A. Sixteen or seventeen years or longer.

Q. Have you ever held any official position in the State of Arkansas connected with the mining business?

A. Yes, sir.

Q. What position was that?

A. State mine inspector at one time.

Q. How long?

A. I think about 18 or 19 months.

Q. What are you doing now?

A. I was working at the Graham and Hall mine at Jenny Lind till it closed down.

Q. In what capacity?

A. At the time it closed down I was shot firer.

Q. At that mine?

A. Yes, sir.

[fol. 306] Q. You have been a practical miner for seventeen years?

A. Yes, about that long.

Q. Do you know anything about the mine near Montreal known as the Fax Coal Company mine?

A. Yes, sir.

Q. Were you ever on the inside of that mine?

A. Yes, sir.

Q. State to the jury, in your own way. Did you ever own the mine or an interest in it?

A. Yes, sir.

Q. Tell the jury in your own way how you acquired your interest in it, and who you bought it from, and how you paid for it, etc?

A. Well, there were nine men in it besides myself, I believe; nine and myself, bought this place; that is bought the lease from Mr. Barkley and Mr. Barnett, I believe along about December, 1922, about that time, or the first of January, the last of December or the first of January.

Q. What did you pay fr it, if you recall?

A. Seven hundred or seven hundred and fifty dollars, something like that, is what we paid.

Q. Were you directly connected with the operation of the mine after its purchase by you and your associates?

A. Yes, sir.

Q. In what capacity?

[fol. 307] A. I had charge of the mine.

Q. You were manager of it?

A. Yes, sir.

Q. State to the jury in your own way what was the condition of the mine at the time you took charge of it, with refere*b*ce to the amount of development work that had been done, and the manner in which it was being operated?

A. It was being operated as a wagon haul mine at the time we bought it.

Q. What is a wagon haul mine?

A. The mine was located the best I remember about a quarter or a little better of a mile off the railroad; and they hauled the coal from the mine to the railroad in wagons.

Q. After you became manager of it, did you continue to operate it in that way?

A. No, sir; we built a tram road the first thing we did from the mine to the railroad track.

Q. What sort of tram road did you build, and why did you build it?

A. We built it in order to take the coal to the railroad track in the mine cars instead of hauling it in wagons.

Q. What effect would that have, if any, upon the coal. Did you load it directly from the pit cars into the railroad cars?

A. Yes, sir.

[fol. 308] Q. You built a tipple down there then?

A. Yes, sir.

Q. That was about a quarter of a mile?

A. Yes, sir.

Q. But when it was operated as a wagon haul mine what was necessary to be done; how did you get the coal out of the coal cars into the wagons and then out of the wagon into the coal cars, railroad coal cars?

A. We did not operate it in that manner.

Q. You did not operate it in that manner at all?

A. No, sir.

Q. You have seen wagon-haul mines operated?

A. Yes, sir.

Q. Does it involve the handling of the coal more than if you had a tram?

A. Yes, sir.

Q. Why does it?

A. The coal has to be dumped into the wagons and then out of the wagons into the railroad cars?

Q. How is it handled out of the wagon?

A. With shovels.

Q. When did you make this purchase of the mine?

A. I stated that I believed it was either the last of December, 1922, or the first of January, 1923, I do not remember the exact date.

Q. How long were you the manager of the mine or the owner of an interest in it—were you the manager for the entire time that you owned an interest in it?

[fol. 309] A. Yes, sir.

Q. How long were you connected with it?

A. Until the 15th of the following May.

Q. Now, go on in your own way and state to the jury what was the condition of the interior of that mine, so far as the development work is concerned; how much coal was available, the development work, etc?

A. I do not remember the amount of coal, the number of cars loaded, until we had any more development, I do not remember.

Q. That has been testified to here. What do you know of the development work, if any?

A. I think there were about seven working places when we took the mine, that is the way I remember it right now.

Q. Did you ever hear of a fault in that mine?

A. Yes, there was a fault there.

Q. They had worked up to the fault?

A. Yes, sir.

Q. Did they go through the fault?

A. I do not think so.

Q. You do not think so. You were in charge of the management of the mine there, do you not know whether they did or not?

A. There was some of the mine they never pumped out that I never was in in my life.

Q. Was that in the abandoned slope?

[fol. 310] A. Yes, sir.

Q. They had abandoned it?

A. Yes, the track was tore up and out.

Q. Do you know whether they had abandoned it?

A. No, sir.

Q. They did not go through the fault?

A. I was never in it and I do not think so; I made that statement before.

Q. You know the slope that was being worked, they had not gone through the fault with that slope?

A. No, sir.

Q. You say they were up against it; they had reached the fault?

A. In some places, yes, sir.

Q. That was in the prosecution of the work of developing the mine driving the slope, they had reached it in some places?

A. The work that was done at the time we took the mine, the place that was driven off to the left of the slope, that is the place they had never reached the fault.

Q. Do you know why they abandoned it?

A. No, I do not know.

Q. Did you ask them why they had abandoned it?

A. I do not remember that I did.

Q. They did not tell you there did they?

A. They told us about the fault being there, yes.

Q. I am not talking about the fault. Did they tell you why they had abandoned it and let it run full of water?

[fol. 311] A. I do not think so; I do not remember any conversation about it.

Q. But it showed that it had been abandoned?

A. Yes, it was abandoned.

Q. Did you have charge of the operation that had the fault driven through?

A. Yes, sir.

Q. Did you do any prospecting before it was driven through to determine the location of the vein that was broken?

A. Yes, some.

Q. What did you do?

A. There had been some prospecting done there in this fault; there had been some rock shot down; and we went in there me and some of the other men, I do not remember who, and instead of going straight on we went down there to see if we could find the vein.

Q. Did you know it before you went down?

A. No, sir; I do not think we did.

Q. How far did you drive through the rock?

A. Just a few feet.

Q. How far did you have to grade back of it?

A. I guess sixty or seventy feet.

Q. You say you continued to operate it till the 15th of May?

A. Yes, sir.

Q. To whom did you sell?

A. Graham and Hall.

[fol. 312] Q. They are two of the witnesses here?

A. Yes, sir.

Q. Do you know what you received for it?

A. Each of us received a hundred dollars a share, and they assumed the indebtedness of the mine.

Q. How much was the indebtedness under your management?

A. It was right around five hundred dollars.

Q. How much did it cost you to put up the extra work. How much development work had you done, when you received the one hundred dollars apiece, how much work had you done developing the mine so far as tipple, room and tram was concerned?

A. The only thing we kept the amount of was what we purchased.

Q. You did not keep an account of the work done?

A. No, sir.

Q. You cannot tell the jury what it cost you to build a tram like that a quarter of a mile?

A. No, sir.

Q. You cannot approximate it?

A. I do not know.

Q. You do not know how much it cost you to build the tipple?

A. As I said before, I just kept the amount of material what it cost and the amount of labor, we did all the labor ourselves.

Q. What would the labor that entered into the construction of the tipple shed and tram cost?

[fol. 313] A. About five hundred dollars.

Q. Did you operate that mine at a profit?

A. We just about got wages out of it.

Cross-examination.

Mr. Charlie Evans:

Q. What kind of rails did you use in making that tram?

A. Railroad.

Q. Were they new or second hand?

A. It was second hand rails that we used.

Q. Do you know who you got them from?

A. The McAlester Fuel Company.
Q. Do you remember what you were to pay for it?
A. I do not remember exactly what it was.
Q. But they were used rails?
A. Yes, used rails.
Q. Do you remember where you got the ties?
A. We went to the woods and got them ourselves.
Q. You had charge of the books of the concern?
A. Yes, sir.
Q. Did you pay the royalty?
A. Yes, sir.
Q. How much was the royalty?
A. Thirty cents is what we paid.
Q. To Mr. Woodson?
A. Yes, sir.
Q. How come you men to sell it?
A. We were tired of the place and wanted to get rid of it.
[fol. 314] Q. Was there any confusion about it?
A. No, sir; not to speak of.
Q. Was there any at all?
A. No, sir.
Q. None at all?
A. Not as far as I know about.
Q. The tipple you built, could you load anything but mine run coal?
A. No, sir.
Q. So the coal you sold was mine run?
A. Yes, sir.
Q. That is when you were loading with a tipp*el* you did?
A. Yes, sir.
Q. So if you could sell, or take advantage of selling, lump and slack, you could not handle it that was with a tipple?
A. No, we could not have loaded anything but mine run.
Q. During the time you were there, you did not pump the water out of that slope?
A. No, sir.

[fol. 315] BEN HALL, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?
A. Ben Hall.
Q. You live at Huntington?
A. Yes, sir.
Q. What business are you in?
A. Operating the mine.
Q. How long have you been in the coal business?
A. About 12 years, I guess.
Q. Have you been engaged in operating mines?
A. Yes, sir; about twelve years.
Q. Operating?
A. Yes, sir.
Q. What was your occupation before you began operating a mine?
A. Mining.
Q. How long have you been engaged in the mining business?
A. Twenty-five years.
Q. What work have you done in and around mines?
A. Most everything.
Q. When?
A. The last of my work was in Huntington and Jenny Lind.
Q. What character of work in a mine have you done?
A. Dug coal; drove a mule, boss driver and a little of every thing; laid track and timbered.
[fol. 315a] Q. How is that?
A. Layed track and timbers.
Q. You have done everything about a mine that is to do?
A. Practically, yes, sir.
Q. Are you acquainted with what is known as the Fax Coal Company mine?
A. Yes, sir.
Q. Owned by Barkley and Burnett?
A. Yes, sir.
Q. Did you ever own that mine?
A. We did.
Q. When did you purchase it?

A. Took charge the 15th day of May.
Q. Who did you buy it from?
A. Mr. Speagle, Doctorman and Graham.
Q. You said the 15th day of May,—what year, 1923?
A. I will not be positive.
Q. That was the year right after the strike?
A. Yes, I think it was 1923.

Mr. Evans: That was agreed in the other testimony.

Mr. Pryor:

Q. The 15th of May, 1923 when you bought it?
A. Yes, sir.
Q. Talk loud enough for the jury to hear, and tell the jury the condition of the mine at the time you bought it?
A. This mine was in pretty poor condition when we bought it.
Q. Explain that to the jury?
[fol. 316] A. The main slope of the mine was full of dirt and the west side of the mine was worked out. These boys on the east side had hit a fault, and I went to work on the east side.
Q. What boys hit a fault?
A. Freeman and Speagle and them.
Q. Had hit a fault?
A. Yes, sir: and they had one entry going on the west side, and on the east side I think there were six or seven rooms besides the entry. I went to work on the east side and we moved the dump from the west side up on the main slope to where we had the main slope, and laid track about something like a hundred feet down this main slope.
Q. Had the track been torn up in the main slope?
A. Yes, no track in there.
Q. Do you know of your knowledge the condition that warranted the track being taken up?
A. I do not care to answer the question directly; in my mind, yes, I know that.
Q. State to the jury from your experience as a miner for the last twenty-five years?
A. My idea from looking at it?

Objected to by the plaintiff; the objection was overruled by the court, and the plaintiff saved an exception.

Mr. Pryor:

Q. Give your opinion as to why it was abandoned?

A. In my opinion, the reason it was abandoned, there was a fault ahead of the main slope quartering across it.

[fol. 317] Q. In your opinion was that the reason it was permitted to fill up with water?

A. Well, right below this west entry, these boys had worked previous to us, there was another pair of entries turned off west, we pumped the water down sufficiently to see where these entries were turned, and there was a big fall of rock in these entries and on the right hand side of this entry it was turned west, like the main slope come here, a place turned off ahead of it, this place ahead of the slope hit right across the fault.

Q. In other words that is where the coal ran out?

A. Yes, sir; we made this inspection for our own personal benefit.

Q. You went into the slope for that purpose?

A. Yes, sir; and we drove a right hand air course to the slope and tapped it something like about one hundred feet below where these boys first hit the fault on the east side, the air course was on the west, and it caved in when we took charge, and you could not get air to it. We drove the right hand air course down about one hundred feet, and drove up to the main slope and the coal was here, and drove to the coal on the other side way up here and we shot down to it.

Q. When you struck the fault in the mine was there any way of determining how thick it is, how much rocky sub-

[fol. 318] stance you have to go through to get to the coal again?

A. That is mighty hard to tell.

Q. You did not have any trouble getting cars from the Midland Valley when you were there?

A. No, sir.

Q. You paid the royalty?

A. Yes, sir.

Q. Did you or could you operate that mine at a profit?

A. Not much price for coal at that time.

Q. That was during the period from the 15th of May till the 23rd of October?

A. Sometime in October.
Q. Who did you sell to?
A. Charlie Bugg and two more boys in there.
Q. What did you give?
A. I think it was four hundred dollars.
Q. You paid four hundred dollars?
A. Either four hundred or four hundred and fifty dollars.
Q. What did you sell for; what was the consideration?
A. We sold—we put some of our own stuff there, I do not remember the exact figures, I think something like a thousand dollars, nine or ten hundred dollars.
Q. You had bad coal there?
A. Yes, sir.
Q. You had other equipment there?
A. Yes we bought several pit cars and rails and pipe.
Q. Was Walter Graham there with you in the operation [fol. 319] of the mine, did he take part in it?
A. He was there some, not much; he was at the other mine at Jenny Lind.

Cross-examination.

Mr. Charlie Evans:

Q. You say you could not operate that mine at a profit at the price coal was during that time?
A. No, sir.
Q. Please state to the jury what the price of coal was during that time?
A. At the time I operated it, it ran from $2.75, and I think we got for some few cars $3.25 per ton, mighty few.

Mr. Pryor:

Q. Mine run coal?
A. Yes, sir.

Mr. Evans:

Q. That was the only way you could load it?
A. Yes, sir.
Q. You could not load lump and slack?
A. No, sir.
Q. That is the only way you could sell it, mine run?
A. Yes, sir.

Q. You sold it and got $2.75 and $3.25?

A. Yes, we got some few cars at $3.25, not many.

Q. And the cost of operation and that low price of coal you could not successfully and profitably operate the mine?

[fol. 320] A. No, sir.

Q. How long did you and Graham run it?

A. From May 15 till somewhere in October.

Q. You gave your opinion as to the reasons the mine was abandoned, did you say you pumped water out of the room and inspected it?

A. Yes, sir; pumped far down enough to give it a real inspection, as far as we wanted to.

Q. Could you see to the main slope?

A. Yes, it is very easy to get to the main slope.

Q. As far as they had driven it?

A. Did not go to the face of these two entries, we went in three rooms in these west entries, three rooms.

Q. So you do not know the actual physical condition at the head of the old slope or entries?

A. You mean this west entry?

Q. Yes, sir.

A. No, sir; not the west entry.

Q. You do not know the physical condition there at all?

A. No, sir.

Q. Your answer as to your opinion for their abandoning it that is purely conjecture on your part?

A. Yes, sir; in the main slope.

Q. Purely conjecture?

A. Yes, sir.

Q. You do not know anything about the physical conditions obtaining there?

[fol. 321] A. Yes, that is the idea me and my partner drawed.

Q. You state you sold out there in October 1923?

A. Somewhere in October.

Q. Who did you sell to?

A. Charlie Bugg, and two more boys; I think the Coronado Coal Company.

Q. Did they continue operating as the Fax Coal Company?

A. I do not know.

Q. Do you know whether they continued to operate after that?

A. For a short while; not very long.

Q. Is it in operation now?

A. I do not know.

Q. You don't know whether they continued to operate it or not?

A. No, sir; I do not know.

Q. I don't understand where you said you drove the air course along, what entries?

A. They drove it on the right hand side of the main slope.

Q. Along the right hand side of the main slope?

A. Yes, sir; the air course on the left hand side it caved in and they could not force air to it, and for that reason they had to make the air course on the right hand side.

Q. In driving the air course, did you go through that fault?

A. We did not have to; the boys had gone through the fault.

[fol. 322] Mr. Pryor:

Q. As I understood you, you gave it as your opinion, from your twenty-five year's experience in the mining business, that the reason they abandoned the main slope, was because of the fault ahead of it, as you have heretofore stated to the jury?

A. Yes, sir.

Q. You reached that conclusion after you had examined the place for that purpose?

A. Yes, sir.

[fol. 323] Walter Graham, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?

A. Walter Graham.

Q. Where do you live?

A. Ft. Smith.

Q. What is your occupation?

A. I operate a mine at Jenny Lind.

Q. How long have you been engaged in the coal mining business?

A. Operating something like eight or nine years.

Q. Who have you been associated with during that time in the operation of a coal mine?

A. Myself and Ben Hall.

Q. Where have you operated a mine?

A. At Huntington and near Montreal at a place they call Calebiate Springs and Jenny Lind.

Q. How long did you operate a mine in Jenny Lind?

A. Near three years.

Q. How long at Huntington?

A. Started there about 1915 or 1916.

Q. You have been there seven or eight years?

A. We were down there awhile, and started again last fall.

Q. How long have you and Ben Hall been associated in the operation of a mine.

A. Since we started at Huntington, I Judge somewhere about 1916 or 1917.

[fol. 324] Q. Are you acquainted with the Fax Coal Company mine near Montreal?

A. Yes, sir.

Q. Did you ever own that mine or an interest in it?

A. Yes, sir.

Q. When did you acquire an interest.

A. I think the 15th of May 1922.

Q. From whom did you purchase it?

A. Hall and myself bought nine-tenths of it; Mr. Hall and myself bought nine-tenths of it, Mr. Speagle, Mr. Freeman, Mr. Doctorman and two of the Fox Boys.

Q. Do you remember what you gave?

A. Yes, we gave nine hundred dollars for nine-tenths interest.

Q. How long have you been operating a mine?

A. Operated it until sometime in the fall I think the same year, but I do not remember just what month.

Q. To whom did you sell? Did you sell it?

A. Yes, sir.

Q. Who to?

A. Charlie Buggs and some one else.

Q. How long have you been engaged in working in coal mines?

A. About twenty-eight years.

Q. What character of work have you been doing around mines?

A. Most every kind of work done in the mines around in this country.

Q. Did you ever dig coal?

A. Yes, sir.

[fol. 325] Q. Fire shots?

A. Yes, sir.

Q. You have done every sort of work there is done in the mines?

A. Most all of it, yes, sir.

Q. State to the jury what was the physical condition of the Fax Coal Company mine as you found it after you purchased it, explain as fully as you can?

A. The best I can remember the slope was full of water. Went in there and cut the fault, most of that kind of work seemed to be thru at that time, was thru this fault going in to it. I do not remember. I was not around the place very much myself. I was busy and left Mr. Hall to look after that operation.

Q. Did you investigate it sufficiently to form an opinion as to the reason why the main slope had been abandoned in the mine.

A. Yes, sir, I do not know unless it was on account of that fault in the mine, the difficulty of cutting the fault.

Q. On account of the difficulty of cutting the fault?

A. When we pumped the water down to the main slope — was filled up with rock and when we cleaned that out, we intended to cut the fault, but before we did that, we drove the air course down on the other side of the fault, and did not get on the main slope before we sold out.

Q. Were the tracks torn up in that slope?

A. No sir.

Q. The tracks were not taken up?

A. Yes, the tracks were taken up.

[fol. 326] Q. The tram had been built when you bought it?

A. Yes, sir.

Q. You attempted to operate it successfully, didn't you?

A. Yes, sir.

Q. Did you operate it at a profit?
A. No, sir.
Q. What royalty did you pay?
A. We paid thirty cents a ton.
Q. You paid the regular scale while operating?
A. Yes, sir.
Q. You did not have any wagon haul to pay?
A. No, sir.
Q. You say it could not be operated at a profit while you operated it?
A. We lost money while we were there.
Q. You lost money operating it while you were there?
A. Yes, sir.
Q. Did you get all the cars you wanted from the Midland Valley?
A. Yes, sir.
Q. You never had any trouble about getting cars?
A. As far as I know we had all the cars we wanted; I considered the service good.
Q. The service was good?
A. Yes, sir.

Cross-examination.

Mr. Evans:

Q. Did the Midland Valley ever come to your mine and [fol. 327] demand the output of your mine?
A. Not as I know of.
Q. Did they ever threaten to shut you down?
A. Not as I know of.
Q. Did they ever shut you down because you would not let the Midland Valley have the output of your mine?
A. No, sir.
Q. You say the service was good and you got all the cars you wanted?
A. Yes, as far as I know. I was not there all the time; Mr. Hall was in there.
Q. You could not operate successfully at $2.75 for the coal?
A. Around $2.75.
Q. That had something to do with whether or not you could operate it successfully or not?

A. Of course it depends on what a man can get for his coal, as to what he gets out of it.

Q. The cost of production and the price you get for the coal, determine whether or not you can operate a mine successfully?

A. Yes, sir.

Q. When you operated it the market value of the coal was from $2.75 to $3.00 a ton?

A. Yes, we got some as high as $3.50.

Q. Some, but not much?

A. Yes, sir.

Q. Did you go to the head of the main slope and make an investigation there?

A. Yes, sir.

[fol. 328] Q. Pumped the water out and went right up to the head of the main slope that had been abandoned, the main entry?

A. Yes, sir.

Q. Did Mr. Hall go with you?

A. Yes, sir.

Q. Right up to the head of it?

A. As far as it had gone, two entries on the west come up to the head of them. There was one dip entry I did not go into; and then there was another place we went into that had a room turned off in it and seemed to be driven around from the slope into the fault.

Q. You do not know the main reason that the main slope was abandoned?

A. No, sir.

Q. You are just giving your conjecture, your supposition?

A. Well, I know what I saw. I don't know why he did not work but he stopped.

Q. He had a reason for stopping, and that is your opinion?

A. I did not see any reason; they had stopped it.

Q. You did not see any reason?

A. Not as I know of.

Mr. Pryor: I did not ask you that question, but I will now.

Mr. Evans:

Q. You don't know why he stopped?
A. No, sir.
[fol. 329] Q. You are talking about the mine now?
A. Yes, sir.
Q. You operate a mine at Jenny Lind?
A. Yes, sir.
Q. Do you turn room off the entry there?
A. Yes, sir.
Q. You do?
A. Yes, sir.

Mr. Pryor:

Q. I will ask you if, based on your experience of twenty-eight years in and around mines, what was the reason that slope was abandoned?
A. I cannot say.
Q. Have you an opinion about it, I will ask you your opinion, based on your twenty-eight years' experience in mining—you know there was a fault there?
A. Yes, sir.

Plaintiffs objected; objection overruled and the plaintiffs excepted.

Q. You know, based on your twenty-eight years' experience that some reason must have existed why they stopped the prosecution of the work in the mine in the main slope?
A. Well, I judge there was; there must have been some reason.
Q. There was a fault there?
A. Yes, sir.
Q. In your opinion was that fault the cause of it?
[fol. 330] A. Well, now, I might say it was.
Q. You are only giving your opinion, of course you have no personal knowledge?
A. No, sir.
Q. Give your opinion.
A. In my opinion, that is why it was abandoned, but I do not know that to be true.

[fol. 331] R. A. YOUNG, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?
A. R. A. Young.
Q. Where do you live?
A. Greenwood.
Q. How long have you lived in Sebastian County?
A. About forty-three years.
Q. What is your occupation, and what has been for the last twenty-five years?
A. I have been engaged in the coal business.
Q. In what capacity?
A. Practically in every capacity. For the last sixteen years as superintendent of the Greenwood Coal Company?
Q. Did you ever hold an official position in the State of Arkansas?
A. I was State Mine Inspector for two years, and am at present Chairman of the State Mining Board.
Q. Are you acquainted with the mine known as the Fax Coal Company mine in the Greenwood District?
A. Yes, sir.
Q. Have you visited that mine?
A. I have been at the mine, yes, sir.
Q. You know where it is located with reference to the Midland Valley Railroad?
A. It is about a quarter of a mile from the Midland Val-
[fol. 332] ley railroad.
Q. I will ask you from your experience as a practical miner for a period of twenty-five years, assuming that there is a mine opened there, and a slope that has been driven for some distance, and the slope afterwards abandoned, and permitted to fill with water, and another slope driven off at an angle from that, and that there was a fault in this mine; that there were no parallel air courses, and no fans or system of ventilation, in the mine; rooms driven off the main slope, and it was necessary, when the coal was produced, to be hauled in wagons a distance of a quarter of a mile at a cost of fifty cents a ton, whether or not such a mine, in your judgment and experience, could be operated

successfully at a profit, under the conditions that prevailed there, in the years 1922 and 1923?

A. I do not think it could, Mr. Pryor.

Cross-examination.

Mr. Evans:

Q. If the undisputed proof shows that it cost $2.88 a ton to put the coal on the cars, and that it sold for $5.55 to $6.25 a ton, F. O. B. cars, would that show a profit?

A. I do not think it was possible to produce it for that.

Q. If the proof shows that it was, what would your answer be?

A. If those are the correct figures, it would show a profit.

[fol. 333] Gomer Gower, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?

A. Gomer Gower.

Q. Where do you live?

A. Excelsior.

Q. How long have you lived there?

A. Three years.

Q. Where did you formerly live?

A. Short time at Midland, and prior to that time in Texas.

Q. What is your occupation?

A. Miner.

Q. How long have you been engaged in the coal mining business?

A. Forty-three years.

Q. What character of work have you done in and about a coal mine?

A. Everything that is to be done.

Q. What is your business at the present time?

A. Operating a coal mine.

Q. Where?

A. At Excelsior.

Q. You say you have been engaged in operating a coal mine there for three years?

A. Yes sir.

Q. Did you operate in 1923?

A. Yes, sir.

Q. What sort of mine did you operate in 1923?

[fol. 334] A. It is what is known as a slope mine.

Q. How far is that mine located from the railroad?

A. Two thousand feet.

Q. How do you get your coal from the mine to the railroad?

A. By a tram road.

Q. What is the thickness of the vein of coal in the mine you are operating?

A. Average two feet and eight inches.

Q. Was there any other person associated with you in the operation of that mine?

A. Not at this time, no, sir.

Q. Who owns the mine.

A. The Paris Fuel Company.

Q. Are you working now for the Paris Fuel Company?

A. No, sir; I have the mine leased from them.

Q. You lease the mine now from them?

A. Yes, sir.

Q. Were you in charge of the operation of that mine in 1922 and 1923?

A. Yes, sir.

Q. Have you been able to operate that mine at Excelsior at a profit?

Plaintiffs objected.

Q. Have you been engaged in the coal mining business out near Montreal?

A. No, sir.

Q. Have you been engaged in operating a mine near Huntington?

A. No, sir. Yes, I had some experience near Midland as mine foreman.

[fol. 335] Q. You are acquainted with that vein of coal?

A. Yes, sir.

Q. You are also acquainted with the mining conditions that exist?

A. Yes, sir; I think so.

Q. Are those conditions there the same as they are at Excelsior?

A. They are the same conditions, yes, sir.

Q. The same conditions?

A. Yes, sir.

Q. Is it the same vein of coal?

A. Yes, sir.

Q. The same thickness?

A. Approximately so, yes, sir.

Q. I do not know whether you are acquainted with the Fax Coal Company mine near there, or not; are you?

A. I have only bee- in that mine on one occasion.

Q. When was that?

A. In 1923.

Q. Do you remember what part of 1923?

A. I will correct that. It was in 1924.

Q. In 1924?

A. Yes, sir.

Q. I will ask you if, since you have been in the business, you know the prices and qualities of coal?

A. Yes, sir.

Q. It is up today and down tomorrow?

A. Yes, sir.

Q. The prices fluctuate?

A. Yes, sir.

[fol. 336] Q. I will ask you if, under the conditions that existed out there in that mine, in your opinion, that mine could have been operated successfully?

A. I can only say in reply to that question, one of my sons and myself went there with a view of trying to get hold of it, and the conditions did not seem desirable to me, and I made no further effort to get hold of it.

Q. I am asking you from your experience in the coal mining business, your opinion. How long have you been engaged in the mining business?

A. Forty-three years.

Q. Based upon your knowledge and experience gained from being engaged in the coal mining business, for that period of time, state your opinion as to whether or not that mine could have been successfully operated, under the conditions that existed there?

A. Well not under any physical conditions of that kind. I went down there and saw that fault, and after seeing that,

I became convinced that whoever operated it, or operated that mine, would have to expend a good deal of money to place it in working condition.

Q. In you- opinion, was that fault a serious interference with the operation of that mine?

A. I deemed it so yes, sir.

Q. Did you have any fault at all in your mine at Excelsior?

A. No, sir.

Q. What was the average profit per ton of the coal produced in your mine during the years 1923 and 1924?

[fol. 337] Mr. Evans: That is objected to as to any other mine. He asked the average profit per ton at his mine, or a mine he is operating, or operated, when there is no question of that sort involved in this case.

The Court: That is so far away from 1921.

Mr. Pryor: It is alleged in the complaint from June 1922, until January 1, 1923. I will ask him the question in that way.

The Court: Ask him that way.

Mr. Pryor:

Q. Was your mine operated in an economical manner?

A. Yes, sir.

Q. What was your average profit per ton for the coal you mined in 1922 and 1923?

Mr. Evans: The complaint is from June 1922 to January 1st, 1923.

Mr. Pryor:

Q. Do you know what the average profit was at that time?

A. I started to say, I did not take charge of the mine there at Excelsior until August, 1922, and began to produce coal on the 11th day of September.

Q. Taking the general average, what was the profit on the coal produced during that period, from the time you took charge until January 1st, 1923?

A. Around thirty-five cents a ton.

Cross-examination.

Mr. Charlie Evans:

Q. What period?

[fol. 338] A. From September 11, 1922, till January 1st, 1923.

Q. From September 11, 1922, till January 1st, 1923?

A. Yes, sir.

Q. What was the thickness of this vein?

A. Two feet and eight inches.

Q. Does it not cost more to mine coal of a thickness of two feet eight inches, than above that?

A. Yes, sir.

Q. How much?

A. Four cents.

Q. Four cents per ton?

A. Yes, sir.

Q. Any other conditions of that kind?

A. No, I think that is the only condition.

Q. That is, four cents per ton per inch.

A. No, sir; we have a slightly different scale difference from the Montreal scale.

Q. That is four cents per ton?

A. No, it is an advance of two cents an inch from two inches.

Q. Below two feet and eleven inches the basic average is 2 feet 11 inches. Do you know the thickness of the vein of the Fax Coal Company's mine?

A. No, but I imagine.

Q. What?

A. Two feet seven inches

Q. When did you measure it?

[fol. 339] A. There was a place driven off on the north of the slope or probably west of the slope.

Q. How come you to measure it there?

A. I saw the thickness of the coal.

Q. Did you measure it at any other place?

A. No, sir.

Q. Was that the thinnest place you found?

A. No, sir.

Q. Was there a strike in 1922?
A. Yes, sir.
Q. Was it settled?
A. Yes, sir, at the time I began work.
Q. It had been settled when you went to work?
A. Yes, sir.
Q. What time was it settled?
A. I cannot recall the date, but it was the latter part of August, 1922.
Q. That is the — it was settled.
A. Yes, sir.
Q. You say that in the middle of November, 1922, you made a contract with the Midland Valley Railroad Company to take the entire output of your mine?
A. Yes, sir.
Q. From that time on did you get all the cars you wanted?
A. Yes, sir.

Mr. Pryor:

Q. You say the average thickness of your coal there was 28 inches?
A. Yes, sir.
Q. When you measured there it was 27 inches?
A. That was the thinnest working there.
[fol. 343] Q. And you made a profit of thirty-five cents?
A. Yes, sir.
Q. You did not pay fifty cents a ton for hauling it from the mine to the spur?
A. No, sir.
Q. If you had, you would have lost fifteen cents a ton instead of making that profit from June, 1922 to January 1st, 1923?
A. That would have added fifty cents a ton to the cost of production.

[fol. 344] D. B. Withers, a witness, for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. State your name?
A. D. B. Withers.

Q. Where do you live?

A. McAlester, Oklahoma.

Q. What is your occupation?

A. General sales agent for the McAlester Fuel Company.

Q. How long have you been general sales agent for the McAlester Fuel Company?

A. In that particular capacity for about twelve years.

Q. How long have you been connected with the McAlester Fuel Company?

A. Altogether about twenty-five years.

Q. What business is the McAlester Fuel Company engaged in?

A. They are jobbers of coal and shippers of coal.

Q. What is the extent of their business in selling coal?

A. In tons?

Q. Yes, sir.

A. Annually.

Q. Yes, annually.

A. Including everything, Mr. Pryor, it will run from a million and a quarter to two million tons a year, depending upon the orders, of course; some years are heavier than others.

Q. Where do you purchase the coal sold by the McAlester Fuel Company?

A. In Arkansas, Oklahoma and Kansas principally.

[fol. 345] Q. What are your duties as General Sales Agent for the McAlester Fuel Company, do you buy coal as well as sell coal?

A. Yes, sir. I look after the selling arrangements, that is, making them and the selling of the coal.

Q. Were you acquainted with the conditions existing in the coal mining business during the year 1922?

A. Yes, sir.

Q. Was there a strike during that year?

A. Yes, a shut down upon the expiration of the wage contract.

Q. How long did that shut down exist?

A. The mines closed on the first of April and resumed on the 23rd day of August 1922.

Q. Was that the time the shut down was called for?

A. The agreement for a new contract was reached on August 23rd, and then the mines began operations.

Q. You are acquainted with the conditions that existed after the shut down was over in August 23, 1922, from then until January 1, 1923, with reference to the coal car situation?

A. The supply of empty cars for the mines?

Q. Yes, sir.

A. Yes, sir.

Q. What was the condition?

A. Well, the cars were rather scarce and hard to get—you mean immediately after the resumption of the work of the mines after August 23?

Q. Yes, sir. After resumption of work.

A. All the mines started right away and that taxed the [fol. 346] capacity of the railroads for cars.

Q. Did that condition obtain on other railroads besides the Midland Valley Railroad?

A. Oh, yes.

Q. What other railroads do you recall that had a scarcity of coal cars?

A. Practically every railroad serving the coal districts, Frisco, Missouri Pacific, M. K. & T. and Rock Island.

Q. Was there any railroad able to meet the demand for cars for the shipment of coal on their road?

A. Not a hundred per cent no, sir; there was some idle time.

Q. Was that true with reference to all the coal mines in this field; did they have trouble getting coal cars?

A. Yes, sir.

Q. What localities were affected by it?

A. All the mines here in the Sebastian County and in the McAlester District of Oklahoma and Henrietta, Oklahoma, and the Bokoshe and Milton District.

Q. These various railroads you named, the Frisco, Rock Island, M. K. & T., and the Missouri Pacific, and the Kansas City Southern, did these roads have trouble in obtaining a sufficient supply of coal cars?

A. Yes, sir.

Q. And the M. K. & T.?

A. Yes, sir.

Q. Were you able to get cars in which to ship coal?

A. Some, but not on- hundred per cent.

[fol. 347] Q. About what per cent?

A. Well, that would be a little hard guessing without looking at the records.

Q. You can state approximately.

A. Oh, I would say from fifty to seventy-five per cent, it might vary a little on various railroads.

Q. Are you familiar with the rules of the Interstate Commerce Commission for the distribution of the available coal car supply?

A. I think so.

Q. Were you acquainted with what is known as the Fax Coal Company operating a mine near Midland, Arkansas?

A. Yes, sir.

Q. Did you buy coal from that company?

A. We got an agreement with them to buy some, but they did not ship it.

Q. Did they repudiate their agreement?

A. Yes, sir. Failed to live up to it, which would be the same thing.

Q. Who was in charge of this coal company at that time.

A. I cannot recall the names unless I heard them.

Q. Tom Barkley and Alton Burnett.

A. Yes, sir.

Q. These two men here.

A. Yes, sir.

Q. You are personally acquainted with them?

A. No, sir.

Q. You have had correspondence with them?

[fol. 348] A. I am not sure that we have Mr. Pryor, our representative here in this district made the arrangement.

Q. Who was your representative?

A. George Peterbaugh.

Q. Where is he now?

A. In McAlester.

Q. Mr. Withers are you acquainted with the market price of coal from June, 1922, June the 22nd, 1922, to December 31 of that year, or January the first, 1923?

A. Yes, sir.

Q. Have you a record of what coal was selling for at that time?

A. Yes, sir.

Q. Refer to your record and refresh your memory and state to the jury what coal was selling for during that period.

A. What grade?

Q. Take mine run coal.

A. Mine run ran all the way from $3.75 to $5.00 that was the maximum.

Q. How do you account for the variation in price?

A. On account of the mines having closed from April to August, 1923, and there was a scarcity, and stocks had been reduced, and when the mines resumed operations in August, there was a pretty brisk demand, and that is what caused the price to reach the maximum.

Q. How was it in September, what was the price of mine run during that time.

A. 1922.

Q. Yes, sir.

A. It ran along about the same.

[fol. 349] Q. How was it in October?

A. It ran from $3.75 to about $4.00, as the mines reached normal capacity where they would put out coal.

Q. Is the selling price or market price of coal governed by the same law of supply and demand as other commodities?

A. Yes, sir.

Q. Immediately after the strike, or in August, it was from $3.75 to $5.00?

A. Yes, sir.

Q. And in October from $3.75 to $4.00?

A. Yes, sir.

Q. How was it in November?

A. $3.75 was about the normal price in November.

Q. How was it in December?

A. $3.75.

Q. That is usually about the period of the year when coal reaches its maximum price, in December?

A. Yes, sir.

Q. You say it was $3.75?

A. Yes, sir.

Cross-examination.

Mr. Charlie Evans:

Q. You state that the McAlester Fuel Company had a contract with the plaintiffs in this case for the coal from their mine?

A. Yes, sir.

[fol. 350] And repudiated the contract?

A. They failed to deliver the coal.

Q. Let me see the contract.

A. It was a verbal agreement.

Q. Who made it?

A. Mr. George Peterbaugh who represented us in this district at that time.

Q. When was it made?

A. It was in June, 1922.

Q. You were present when it was made?

A. No, sir.

Q. You were not?

A. No, sir.

Q. How do you know any contract was made then?

A. By a report from George Peterbaugh working under my direction.

Q. You have no written contract?

A. No, sir.

Q. Where were you when it was made?

A. In McAlester.

Q. Where was the agreement made?

A. The agreement was reached at their mine.

Q. You are willing to swear that?

A. Yes, sir.

Q. And you are swearing that?

A. Yes, sir.

Q. That that contract was made?

A. Between Peterbaugh and the mine.

Q. You are swearing that?

[fol. 351] A. Yes, sir.

Q. I will ask you if that was June 21, 1923?

A. To be exact, I think it was June 21, 1923.

Q. Where were you?

A. At McAlester.

Q. Where was Mr. Peterbaugh?

A. He must have been out there.

Q. In Sebastian County?

A. Yes, sir.

Q. What was the occasion?

A. I will explain to you——

Q. You have explained enough. What occasion?

Mr. Pryor: I submit that the witness has a perfect right to make any explanation he desires to.

The Court: Yes, if he wants to explain he may do so.

Witness: We sent the usual written order that formed the agreement that was had between our representative and the Fax Coal Company.

Mr. Evans:

Q. That is the explanation you wanted to make is it?

A. Yes, sir.

Q. Has the McAlester Fuel Company any connection with the Midland Valley Railroad Company?

A. None whatever.

Q. Did you sell them coal?

A. Yes, sir.

Q. And they furnished you cars?

A. Yes, sir.

Q. Do you know the route of the Midland Valley Rail-
[fol. 352] road that it follows?

A. Yes, sir.

Q. Will you please state that to the jury?

A. It starts from Greenwood here and runs through Excelsior, Rock Island, and through Stigler, Muskogee, and on through Tulsa to Wichita, Kansas.

Q. Does the Midland Valley Railroad Company operate coal mines along the Midland Valley Railroad, does it follow the coal belt practically from end to end?

A. Not from end to end.

Q. Where were the coal mines along that line in Oklahoma?

A. Mines at Stigler.

The Court: I do not see what reference that has to the case.

Mr. Evans: I want to show that there were numerous mines along the Midland Valley Railroad, and that they would be required under the law *fo* provide for a normal increase in the output of these mines. Counsel made the statement that the Midland Valley Railroad had more cars than any other road; and I want to show that the Midland Valley is a coal road and follows in this county the coal belt.

The Court: Very well.

Mr. Pryor: I said more cars per mile than any other road.

Mr. Evans: And I want to show that there are more coal mines per mile.

Q. Please state the places in Oklahoma that you can recall where there are coal mines along the Midland Valley? [fol. 353] A. Mines at Bokoshe, Stigler and at Porum. Those are the principal mines on the Midland Valley in Oklahoma.

Q. All right. Any in Kansas?

A. No, sir.

Q. No mines on the Midland Valley out there?

A. No, not on the Midland Valley.

Q. The statement you testified from, what is that; when you were asked the price of coal, you referred to a memorandum?

A. That is my office record.

Q. Did you make it at the time, or when did you make it?

A. That was made in the regular order of business.

Q. As you go along?

A. Yes, sir.

Q. That was made at the time the transactions took place? Is that correct?

A. Yes, sir.

Q. Do you mean to say that during the months of July and August, 1922, the highest price for mine run coal was five dollars per ton?

A. That is the highest price we sold any for.

Q. What did you sell lump coal for during that period?

A. What period?

Q. July and August 1922.

A. The price of fancy lump on and after August 23rd, was $8.00.

Q. What was it before August 23rd?

A. I do not know that we had any then; the mines were idle at that time.

Q. So, when the mines resumed work the price was $8.00? [fol. 354] A. Yes, sir.

Q. Before that, you did not have any to offer?

A. No, sir.

Q. As I understand you, you did not sell any mine run coal above five dollars during any period in 1922, is that correct?

A. Yes, sir; that is right.

Q. During or after September the price dropped about four dollars for mine run?

A. I think that was along in October.

Q. In October?

A. Yes, sir.

Mr. Pryor:

Q. I believe you stated that there was a confirmation of this verbal agreement in writing to your office?

A. Yes, sir.

Q. By the Fax Coal Company?

A. Yes, sir.

Q. Have you a copy of it there?

A. I am not sure.

Q. I thought perhaps you had a copy of the confirmation letter.

A. Yes, I have a copy of that letter.

Q. Let me see it please. (Letter produced.)

Q. You say it was not the custom to write a regular letter of confirmation of this agreement?

A. No, sir.

Q. What did you do with reference to confirming it if anything?

[fol. 355] A. Mailed a written order.

Q. A written order?

A. Yes, sir.

Q. Is that a copy of it?

A. Yes, sir.

Q. Was the written order mailed to the Fax Coal Company?

A. Yes, sir.

Q. At what place?

A. Midland, Arkansas.

Q. In confirmation of the verbal agreement they had with Mr. Peterbaugh?

A. Yes, sir.

Q. Did you ever hear from that at all?

A. We received no shipments, and I called these parties once or twice by telephone and urged them to ship the coal on that order.

Q. Do you know who you talked with, whether Barkely or Barnett?

A. I cannot say.

Q. Did you ask for the Fax Coal Company?

A. I called for the Fax Coal Company.

Q. And some one answered the telephone?

A. Yes, sir.

Q. And you called his attention to the agreement that he had with Mr. Peterbaugh?

A. Yes, sir.

Q. Did he disclaim having any such agreement?

A. No, sir.

[fol. 356] Q. Did not deny it?

A. No, sir.

Q. What reason did he give, if any, for not shipping the coal according to the agreement, if you recall?

A. I do not know that *U dol* that has been quite a while ago.

Q. You do not know that you called them for the purpose of finding out why they did not ship the coal?

A. Yes, urging them to make shipments in accordance with the order.

Q. And they did not deny having any such agreement?

A. No, sir.

[fol. 357] E. L. Dubois, a witness for the defendant, being sworn, testified as follows:

Mr. Pryor:

Q. What is your name?

A. E. L. Dubois.

Q. Where do you live?

A. Muskogee, Oklahoma.

Q. Are you connected in any way with the Midland Valley Railroad Company, and if so, in what capacity, and are you now so connected?

A. Yes, sir.

Q. Were you connected with the Midland Valley Railroad Company in the year 1922?

A. Yes, sir.

Q. In what capacity?

A. I am assistant treasurer and purchasing agent.

Q. How long have you been connected with the Midland Valley Railroad?

A. Since May, 1904.

Q. Twenty-one years ago.

A. Yes, sir.

Q. What positions have you held during that time with the Midland Valley Railroad?

A. Various positions, clerical positions and other positions.

Q. How long have you been purchasing agent for the Midland Valley?

[fol. 358] A. Twelve or thirteen years.

Q. What are the duties of the purchasing agent of the Midland Valley Railroad Company, what does he do?

A. He purchases the necessary material and supplies.

Q. Does that include the purchase of coal?

A. Yes, sir.

Q. Did you have any assistants in connection with your position as purchasing agent?

A. No, sir.

Q. Did Mr. Floyd Tyler or any one in Arkansas have authority to purchase coal, for the Midland Valley Railroad except you?

A. No, sir.

Q. Do you know whether or not Floyd Tyler received authority from any source to purchase any coal from the plaintiff the Fax Coal Company?

A. Not to my knowledge.

Q. Did anyone except you have authority to make purchases of coal or supplies for the Midland Valley Railroad?

A. No.

Q. You did all the purchasing?

A. I did.

Q. Did that apply during the year 1922?

A. Yes, sir.

Q. Did you authorize Floyd Tyler or anyone else to offer the plaintiffs $3.55 a ton for their coal during the month of June, 1922?

A. Not to my knowledge, Mr. P vor.

[fol. 359] Q. You say not to your knowledge, you have knowledge as to whether or not you authorized him to purchase coal from the plaintiffs for the Midland Valley during that time?

A. Yes, sir.

Q. And you state that you did not authorize him to purchase coal from the plaintiffs?

A. No sir.

Cross-examination.

Mr. Evans:

Q. You state that Floyd Tyler was not authorized to make purchased of coal for the Midland Railroad Company?

A. No, sir; he was not.

Q. That is your testimony?

A. Yes, sir.

Q. He did not buy any coal for the Midland Valley Railroad in June, 1922?

A. No, sir.

Q. He did not?

A. No, sir, without proper authority.

Q. Did he have any authority to buy coal in June, 1922, for the Midland Valley Railroad Company?

A. Not that I remember.

Q. Have you any records?

A. Not with me.

Q. I will ask you if in June, 1922, Floyd Tyler did not buy coal from Mr. Ezell, in Sebastian County, Arkansas, on June 20th for $3.55 a ton?

[fol. 360] A. I do not recall so many transactions at the time.

Q. With Tyler?

A. Tried to secure coal during that time.

Q. So he was authorized to get coal for the Midland Valley during that time?

A. He was authorized to find it if it was possible to secure coal which I could purchase.

Q. How is that?

A. He was authorized to find where we could secure coal if possible.

Q. Was he authorized to make contracts for you?

A. He was authorized to find this out and if so we would tell him to secure it and return it with a regular order.

Q. Was he authorized to buy coal for the Midland Valley Railroad in June or July, 1922, answer the question yes or no.

A. I cannot reply for sure, he might have been under certain circumstances.

Q. Don't you know that in June, 1922, he was authorized to buy coal for the Midland Valley Railroad Company?

A. I do not recall right now and I would not answer direct.

Q. Do you recognize that? (Presenting paper.)

A. Yes, sir.

Q. What is that?

A. That is a letter.

Q. Who from?

A. From the Midland Valley.

Q. Who signed it?

A. I did.

[fol. 361] Q. Who is it to?

A. Elmer Izell, Route 2, Greenwood, Arkansas.

Q. Read it to the jury.

Here the letter referred to was introduced in evidence, marked Ex. D and read to the jury as follows:

EXHIBIT "D" TO TESTIMONY OF DUBOIS

"Midland Valley Railroad Company

E. L. Dubois, Purchasing Agent and Assistant Treasurer

Muskogee, Oklahoma, Sept. 28th, 1922.

File 65-7c.

Mr. Elmer Izell, Route No. 2, Greenwood, Arkansas.

DEAR SIR: This will acknowledge your letter of September 12th in reference to cars 1095 and 579 which you in-

voiced us at $4.25 per ton instead of $3.55 as quoted by you to Mr. Floyd Tyler.

Under date of June 20th the Consumers Ice & Fuel Co. forwarded you an order for the output of your mine or ten cars of first class mine run coal per month until further advised, at $3.55 per ton. If this was not correct, you should have taken exceptions to the price at the time. This was a standing order and as you took no exceptions thereto it of course made the order binding on you.

However, I will recommend to our people that we allow you for these two cars of coal $4.00 per ton, that being the maximum price we paid for coal secured at different places along the line during the time when these two cars in ques- [fol. 362] tion were shipped, viz, 1095 and 579. If you will render a corrected invoice accordingly I will submit same and in case I can get approval thereon will issue an additional voucher in your favor.

Yours very truly, E. L. Dubois."

Q. Do you recognize this paper (presenting another letter)?

A. Yes, sir.

Q. And the letter attached to it (referring to letter attached)?

A. It is on my letter head. I don't know whether it is a copy. Is it marked copy?

Mr. Pryor:

Q. Is it signed by anybody?

A. No. It is a copy.

Q. It purports to be a copy.

A. Yes, sir.

Q. Read it to the jury.

Letter marked Ex. E, introduced in evidence, and read to the jury as follows:

EXHIBIT "E" TO TESTIMONY OF DUBOIS

"Midland Valley Railroad Company

E. L. Dubois, Purchasing Agent and Assistant Treasurer

Muskogee, Oklahoma, August 5, 1922.

File 65-7c.

Mr. Elmer Izell, Excelsior, Arkansas.

DEAR SIR: I am in receipt of your invoices covering cars MV 992 and 725 and note that you are invoicing us the first mentioned car at $4.00 per ton and the latter at $4.25.

I will be glad if you will advise me if there is any good reason why this coal should not be invoiced us in accord- [fol. 363] ance with agreement made with you under date of June 20th, 1922.

Yours very truly, —— ——.

Copy."

Also the letter attached referred to, marked ex-F, was introduced, and read to the jury as follows:

EXHIBIT "F" TO TESTIMONY OF DUBOIS

"Midland Valley Railroad Company

E. L. Dubois, Purchasing Agent and Assistant Treasurer

Muskogee, Oklahoma, September 9, 1922.

File 65-7c.

Mr. Elmer Izell, Route No. 2, Greenwood, Arkansas.

DEAR SIR: I am in receipt of your letter of the 7th inst. and in accordance with your request I am enclosing you herewith copy of my letter of August 5th, to which I have never received a reply.

Yours very truly, E. L. Dubois."

Q. Did you make an agreement with Mr. Izell in June, 1922?

A. According to that I sent an order for coal.

Q. Don't you know that June 20th is the date he had a conversation with Floyd Tyler?

A. No, I did not look up Mr. Izell before leaving here.

[fol. 364] Q. You wrote these letters?

A. Yes, I wrote these letters.

Q. The Midland Valley Railroad Company got coal that Floyd Tyler was buying then?

A. Yes, I guess so.

Q. Don't you know so?

A. Got these two cars according to these letters.

Q. You signed these letters?

A. Yes, sir.

Q. So you got these two cars that Floyd Tyler bought?

Question not answered.

Mr. Pryor:

Q. You say that Floyd Tyler would secure coal for you if it could be obtained and let you know at what price it could be obtained?

A. Not secure, he would endeavor to find where he could secure it, and I would place the order.

Q. This letter that was just read, that is dated September 28th, you wrote Mr. Izell under that date in which you state: "This will acknowledge your letter of September 12th in reference to cars 1095 and 579 which you invoiced us at $4.25 per ton instead of $3.55 as quoted by you to Mr. Floyd Tyler." Was that the agreement, simply quoted the price to Tyler for which he would sell it, and he would report to you, and you would have to consummate the purchase?

[fol. 365] A. Yes confirm that with a regular purchasing agent's order.

Q. His business was to merely locate the coal if he could and at what price it could be obtained?

A. Yes, sir.

Q. But had no authority to buy coal for the Midland Valley Railroad Company?

A. No, sir.

A. M. WILLIAMS, a witness for the defendant, being sworn testified as follows:

Mr. Pryor:

Q. State your name to the jury?
A. A. M. Williams.
Q. Where do you live?
A. Muskogee, Oklahoma.
Q. Are you connected with the Midland Valley Railroad Company?
A. Yes, sir.
Q. In what capacity?
A. General Manager of the Midland Valley Railroad Company.
Q. What position did you hold with that Company during June, 1922.
A. I was Assistant General Manager at that time.
Q. Did you have anything to do with the *si-tra*bution of the coal cars supply at that time?
A. Yes, sir.
[fol. 366] Q. Will you explain to the jury the method you had for distributing the available supply of coal cars you had during June, 1922?
A. We were operating under uniform instructions during that time contained in a circular which we call CS-31, which was originally promulgated by the United States Railroad Administration during the period it operated the Railroads, and after the railroads were turned back to their owners, the Interstate Commerce Commission directed the railroad companies to continue this system of distribution under CS-31. This circular which applies to tipple mines only, the basis of distribution in times of car shortage is entirely on a ton-age basis, the out put of the tonnage of coal for an eight hour work day, and there are certain regulations prescribed by which they report the output of the mine and give the rating, on the average output of an eight hour period, and that is comp*li*ed from month to month, from the information given in the reports from the various mines, and a basis is given each month bases on the performance of the mine for the previous month, and that aplies to tipple mines only.

Q. Is there any rule as far as you know of the Interstate Commerce Commission providing for the distribution of cars to wagon loading mines?

[fol. 367] A. No, sir; none to my knowledge.

Q. Was there a serious shortage in coal cars during the period from June 1922 to January 1st, 1923?

A. Not till after the mines resumed operation.

Q. Do you know when the mines resumed operation.

A. I do not know the exact date, the latter part of August, the 20th or 21st.

Mr. Evans: That is not introduced:

Mr. Pryor: We are going to.

Witness: During the time the mines were idle, everybody had plenty of equipment, and open top cars, coal cars, but immediately upon the resumption of operation of the mines in August, there was a very great demand for coal cars, and in just a short time all the coal cars were used up, a hundred per cent, and then we had the supply exhausted down to about fifty per cent in this territory, and that meant that we could furnish only about fifty per cent of the coal cars ordered; and that applies to the Midland Valley itself.

Q. Do you know whether or not you had any serious trouble recovering your coal cars from your connecting carriers?

A. Very serious.

[fol. 368] Q. Your connecting carriers, Missouri Pacific at Greenwood, Frisco at Hackett, the Rock Island and Kansas City Southern?

A. Yes, sir.

Q. And the Fort Smith and Western at Bokoshe?

A. Yes, sir; and the M. K. & T. at Muskogee, and the Santa Fe at Tulsa.

Q. And then the Frisco again at Tulsa?

A. Yes, sir.

Q. Did you have trouble getting cars back from your connections after having delivered to them loaded cars?

A. Yes, the worst there had been for many years. I asked for and tried to get equalization from the connecting lines to deliver an equal amount empties as loaded cars delivered to them; that is what we call equalization, if we

A. Yes, sir.

Q. Are you acquain-ed with a gentleman here by the name of W. C. Caudle?

A. No, sir.

Q. Did you ever have a conversation with him over the telephone with reference to cars for the Fax Coal Company's mine, the Plaintiffs in this case?

A. No, sir.

Q. Did any such conversation occur between him and any one in your office at Muskogee.

A. No, sir.

Q. Have you any record of any complaint made by the Plaintiffs in this case about furnishing coal cars in June 1922?

[fol. 373] No, sir.

Q. Or at any time between that time and January 1st, 1923?

A. No, I do not recall any complaint at any time; and we had no complaint from the Fax Coal Company to my knowledge.

Q. No complaint of that character in the ordinary routine of your business was called to your attention?

A. No, sir.

Q. If there had been, it would have been called to your attention, in the ordinary course of business?

A. Yes, sir.

Q. What system have you in force for taking care of complaints of that character?

A. If I am in the office I am called to the telephone and handle it direct, and if not, a memorandum is made and left on my desk for my personal handling when I come into the office, of the distribution of coal equipment.

Q. And you state you have not received any complaint from these plaintiffs with reference to furnishing their mine coal cars?

A. No, sir.

Q. Do you know whether box cars were used for loading coal at wagon loading mines, during the period right immediately after the strike was ended; some witness says the 23rd of August and some say the 15th?

[fol. 374] A. Box cars were used all during the fall of 1922 at Wagon loading mines.

Q. If you recall, what mines loaded box cars with coal, what wagon loading mines?

A. Mines at Kenema, I do not remember the names of the mines. They change so many times.

Q. At Stigler?

A. No, sir, that was steam shovel operations; it was one or two mines this side of Rock Island, but I do not recall the name. Mr. Power's record will show exactly, how many and at what points .

Q. I will ask you if Floyd Tyler or any other agent of the Midland Valley had any authority from you or from the Midland Valley Railroad Company to threaten to close down any mine or fail to furnish cars?

A. Absoluetely none.

Q. You say that you and your office had absolute charge of the distribution of coal cars?

A. Yes, sir.

Q. How far did the authority of Floyd Tyler of Mr. Powers, agents there, either, extend with reference to the matter of the distribution of coal cars?

[fol. 375] Nothing but to carry out the instructions issued from my office.

Q. That is as far as their authority went?

A. Absolutely.

Q. Were such rules as were issued by you from your office based upon the rules of the Inter-State Commerce Commission?

A. Yes, sir.

Q. And you have a record of it?

A. Yes, CS-31.

Q. Did you know anything about the practice of other railroads, at that time during a car shortage, about furnishing cars to wagon loading mines for the purpose of loading and transporting coal?

A. It has been the practice through out the country over a period of a good many years to furnish open top equipment to all mines when they had plenty to supply them; but we were not furnishing open top equipment during car shortage to wagon loading mines, but such mines were restricted to box cars for loading coal.

Q. Tipple mines cannot load into box cars?

A. No, sir.

Q. But wagon loading mines can?

A. Yes, sir.

[fol. 376] Q. Is there anything else you desire to state?

A. No, sir.

Cross-examination.

Mr. Charles Evans:

Q. You say that during the period from April 1, until August 23, 1922, the mines of the District were not operating?

A. That is my information that they were not.

Q. During June 1922, you had ample facilities for taking care of the demand for coal cars.

A. Yes, sir.

Q. During July 1922, you had ample facilities for taking care of the demand for coal cars?

A. Yes, sir, and during August up to the latter part of August.

Q. Have you a record showing that there was a shortage, if there were any, or when it came on.

A. I think our Mr. Powers, coal agent in that field, has records that will show you exactly.

Q. The strike was not settled and the mines did not resume operations till the 23rd day of August?

A. I don't know; it was somewhere in that neighborhood.

Q. And the miners resumed operations a short time after that?

[fol. 377] A. It took a few days to use up the cars on hand. The supply of cars on hand was not exhausted immediately upon the resumption of operations, but in a few days it was exhausted; every one wanted some placed—it was cumulative.

Q. In their fevered haste to resume operations, the mines along the line of your road took all the coal cars you had?

A. That is right.

Q. Just in a few days?

A. Yes, sir.

Q. How many coal cars did you have in the year 1922?

A. I cannot tell without the records.

Q. Ap-roximately?

A. Somewhere in the neighborhood of twelve hundred coal cars at that time.

Q. Where were they when the strike was settled?

A. In June we had about eighty-five per cent at home eight or nine hundred.

Q. Have you a record that will show that?

A. Not, with me.

Q. You have the records?

A. The records are in my office, and I cannot tell exactly to a car.

[fols. 378-380] Q. You say you think you have about eleven hundred cars?

A. That is my recollection.

Q. At that time?

A. Yes, sir.

Q. You are the same A. N. Williams that put out this bulletin (Presenting paper).

A. Yes sir.

Q. That is official?

A. I don't know whether you would call it official or not.

Q. It was put out by A. N. Williams?

A. That is right that is the rating bulletin for the distribution of cars.

Mr. Pryor: Let me see that.

Mr. Evans: I want to introduce it in evidence.

The Bulletin referred to was introduced in evidence Marked "Ex. G" and is as follows:

"Exhibit G" to Testimony of Williams omitted. See Exhibit "B," printed side page 31 ante.

[fol. 381] Q. That is a bulletin dated July first?

A. Yes, sir.

Q. Look over that and state to the jury the number of cars that the mines along your route were able to put out, the number of cars of coal on an average, at that time.

Mr. Swan: That bulleting could not possible show that. That is based on what they had been doing, and will not show the number of cars the mines were able to produce.

Witness: This shows just what they had the last month's work, the last month they worked.

Mr. Evans:

Q. That is dated July first?
A. Yes, sir.
Q. That is the rating for that date?
A. Yes, sir.
Q. Add that up and tell the jury the number of cars for that rating?
A. 122 cars.
Q. 122 cars daily output of the coal mines along the line of your road.
A. That is what they actually produced the last day they *they* produced—what they were capable of producing.
Q. Do you know where the mine rated as the Jackson Mine is?
[fol. 382] A. Yes, I only know ap-roximately.
Q. Where?
A. Near Midland.
Q. Do you know whether or not that is the mine operated by the plaintiffs in this case?
A. I understand it is.

Mr. Pryor: We will agree to that; that it is known as the Jackson Spur where the Plaintiffs' mine was. It does not show the Fax Coal Company; it is Jackson Spur, the same thing.

Mr. Evans:

Q. This shows one car per day.
A. Yes, sir.
Q. This is also a bulleting put out by you, is it? (Referring to paper.)
A. Yes, sir.

Bulletin referred to introduced in evidence, marked "Exhibit H," and is as follows:

[fols. 383 & 384] "Exhibit H" to Testimony of Williams omitted. See Exhibit "C," printed side page 32 ante.

[fol. 385] Q. The Midland Valley Railroad runs passenger trains in Sebastian County?
A. It runs passenger trains on the Midland Valley between Rock Island and Fort Smith.

Q. You run coal trains where you operate coal mines?

A. Yes, practically all our trains handle coal.

Q. Practically all coal trains?

A. No the coal business is — very small item with us.

Q. Since when?

A. For the last ten years.

Q. Are you sure you have more coal cars than any other line in this south-western district?

A. We did not have more coal cars than any other line in the Southwestern District, we have 1,100 coal cars; the Santa Fe owns about eighteen or nineteen thousand; I was speaking about the number of cars per mile of road.

Q. Than what?

A. Than connections.

Q. What connections?

A. Missouri Pacific, Kansas City Southern, M. K. and T. Santa Fe, Frisco, Ft. Smith and Western.

Q. What is the railroad mileage you operate.

A. Three hundred and sixty-five miles.

—. ——.

[fol. 386] A. They are a good deal larger than we are, some are larger than others. Kansas City Southern is 785 miles, and the Santa Fe is eleven thousand.

Q. You have no record from which you can state when this alleged car shortage became acute; can you state the percentage you furnished to the people who demanded cars from you?

A. No, sir; I cannot do that; our coal agent can probably do that. I have no personal knowledge of that.

Q. Who makes the requests for cars?

A. Our coal agent at Excelsior.

Q. Is he anything else beside the coal agent?

A. He is station agent at Excelsior station.

Q. Say that the operator wants coal cars he makes a request to your station agent at Excelsior?

A. Yes, sir.

Q. Who sees to the furnishing of these cars?

A. The agent at Excelsior furnishes them.

Q. The agent at Excelsior furnishes these cars. You have been telling about the rule of the Interstate Commerce Commission that provides for the distribution of the available coal car supply during car shortage?

A. Car shortage we call it.

[fol. 387] Q. All right. What is the substance of that?

A. That the cars should be pro-rated among the various mines on the basis of the performance of the mine for the previous month.

Q. And that is this rating here?

A. Yes, sir.

Q. Based on that?

A. That is for tipple mines only, specifically covers tipple mines only.

Q. Is not there a rule of the Interstate Commerce Commission that requires, that every time you furnish a loaded car to connection that connection is required to deliver you an empty car?

A. Absolutely no; I wish that were true.

Q. Is there not a rule on that at all?

A. No, sir; there is not.

Q. Is that a matter of contract, only, among the carriers and their connecting lines?

A. No, sir; it is a matter with the Interstate Commerce Commission to issue orders upon application being made by the carriers aggrieved for connections to deliver back certain number of cars, but as I understand it this is not mandatory, and there is no rule that I know of to force the [fol. 388] connecting carrier to deliver the cars, or make equalization.

Q. So when you turn a car loose you do not know when or how you will get it back.

A. There is no rule to force its return.

Q. There is no way by which you can have the connecting carriers to deliver you a car back?

A. No, sir.

Q. You had no contract or anything of that kind?

A. No, sir.

Q. Counsel asked you about the demand for coal cars during this time, there was not any more than normal was there?

A. Yes, there was more coal loaded at that time than normal.

Q. Was there any more than normal percentage going off the line?

A. I can not say without the records.

Q. So far as you know there was no difference?
A. I can not state without the record.

Mr. Pryor:

Q. I will ask you if it did not become necessary for you to apply to the Interstate Commerce Commission for relief to obtain the return of empty cars for the loads you delivered to your connecting carriers, or connecting lines, and it made an order for the Missouri Pacific to deliver you two [fol. 389] hundred cars, deliver that number of cars to the Midland Valley Railroad?

A. I don't know whether that order was issued by the Interstate Commerce Commission or the American Railway Asociation, car service division probably issued it.

Mr. Evans:

Q. That is an association of Railway Operators?
A. That is an association supported by the Railroads.
Q. It is not connected with the Intertsate Commerce Commission?
A. No, sir, it is a medium for the distribution of equipment between the various lines; and if the proper relief can not be had immediately from them, then they are privileged to go to the Interstate Commerce Commission.
Q. You were here at the last trial?
A. Yes, sir.
Q. And testified?
A. Yes, sir.
Q. There was some gentlemen that sat here with Mr. Pryor, who was he?
A. Our superintendent was not here at the last trial. Our Superintendent at that time was Mr. Dox, and he is not now connected with the railroad.
[fol. 390] Q. You did have a superintendent at that time?
A. Yes, sir.
Q. But he was not here at the last trial?
A. No, sir.

Mr. Pryor:

Q. Did you have a general Superintendent during June, 1922?

A. We had a superintendent at that time?
Q. Who?
A. Mr. W. L. Fox.
Q. In 1922?
A. Yes, sir.

Mr. Evans:

Q. He was not here at the last trial?
A. No, sir.
Q. And he is not here now?
A. No, sir.

Mr. Pryor:

Q. Where is he?
A. He is not now connected with the Midland Valley Railroad and has not been for nearly two years.
Q. You answered the question that you did not have a superintendent here at the last trial, in January?
A. Last January, No, sir, we did not have any superintendent.
[fol. 391] Q. It was not the superintendent that sat near me during the last trial?
A. We had not had a superintendent for over a year; at the last trial there was no such officer as superintendent.

Mr. Evans:

Q. But in 1922, you did have a superintendent?
A. Yes, sir.

Mr. Pryor:

Q. If you had no superintendent the superintendent had no chief clerk. There wasn't any chief clerk in the Superintendent's office.
A. There wasn't any chief clerk to the Superintendent; the Superintendent had no office force at all; I had a chief clerk.

[fol. 392] FRANK PIGG, a witness for the defendant, being sworn testified as follows:

Mr. Pryor:

Q. State your name.
A. Frank Pigg.
Q. Where do you live?
A. At Excelsior.
Q. How long have you lived there?
A. About forty years.
Q. How long have you lived in Sebastian County?
A. Practically all my life, all but about three years.
Q. Reared out there.
A. Yes, near Jenny Lind.
Q. In Bass Little Township?
A. Yes, sir.
Q. What is your occupation?
A. Conductor on the Midland Valley Railroad.
Q. How long have you been connected with the Midland Valley railroad?
A. Ever since 1905, I went to work in the car department in 1905; I have been running a train about fifteen years, in August.
Q. What position have you held with the Midland Valley, and the character of work.
[fol. 393] A. I first worked as car repairer and went to work as a brakeman later, and worked as brakeman about eleven months, and then got promoted to running a train.
Q. Promoted to conductor?
A. Yes, sir.
Q. How long have you been a conductor?
A. Fifteen years in August.
Q. Are you acquainted with the plaintiffs in this case, Thomas Barkley and Alton Burnett?
A. I am acquainted with Burnett and I know this fellow when I see him; I have been acquainted with Barnett several years.
Q. Did you know them when they were operating what is known as the Fax Coal Company mine at Jackson Spur near Montreal?
A. Yes, sir.

Q. Did you ever have a conversation with either one of them about furnishing them with cars?

A. No, I do not believe I ever did.

Q. Did you tell Alton Burnett, one day as the train was moving out from the spur, Jackson Spur—did you ask him, rather, how much he was going to give you for stealing these two cars and placing them in the spur for him?

A. No, sir.

[fol. 394] Q. That is, that you had stolen any cars for him?

A. No, sir.

Q. Did they ever ask you to steal any cars?

A. No, sir.

Q. Did you tell Tom Barkley at Midland on the platform he says that the next time he wanted any cars he would have to order them because you were not going to steal any more for him, or words to that effect?

A. No, sir; I never made any such statement.

Q. Did you ever have a conversation with either one of them?

A. Mr. Barnett one evening, he was furnished some box cars, I do not know the date, along in the fall like, I asked him was he going to load them, and he said no, he was not going to load those box cars, so I made a report to Mr. Powers coal agent at Excelsior, when I got in that night off the run that Jackson Spur had some box cars in there and refused to load them, and I believe the next day, I think that was Saturday, probably Sunday, and he said we had just as well take them out if he was not going to load them, and as well as I remember we gave them to Davis mine.

Q. Where is that mine?

A. Where is the Davis Mine?

—. ——.

A. Located east of Prairie Creek.

[fol. 395] Q. Was that a wagon loading mine?

A. Yes, sir.

Q. Did he load box cars?

A. Yes, sir.

Q. That mine loaded the box cars that Barnett told you that they would not load?

A. Yes, sir.

Q. Do you know whether, during that period, it was customary to furnish wagon loading mines box cars for loading coal?

A. Yes, along about that time, if they did not have plenty of coal cars they would use box cars at wagon loading mines; and that mine had no tipple and was a wagon loading mine, and they loaded their coal from a platform they had made from a wagon; and that is what is called a wagon-loading mine.

Q. At that time you pulled these box cars from the spur track, did you see either one of them?

A. Yes, I saw Barnett on the platform at Midland.

Q. Was it Barnett or Barkley?

A. Barnett.

Q. You saw him?

A. He got on the caboose just as I started to leave, and I asked him if he was going to load the box cars and he said "No I am not going to load them, and I did not take them [fol. 396] out then because I had a long train, but when I got to Excelsior, I reported the facts to Mr. Powers.

Q. And Mr. Powers told you that if they were not going to load them you might as well take them out.

A. Yes, sir.

Q. You state that at no time you ever told either one of them you had stolen any cars for them?

A. No. sir; I did not make any such statement.

Q. Did Mr. Le Feber ever bail you out for doing it?

A. No, sir.

Cross-examination:

Q. What was the rule or custom with reference to setting cars, would you set them at the direction of the coal agent?

A. Yes, we have a coal agent at Excelsior, and he handles the instructions what to do with the cars; we have a 21 report, 5 P. M. report, he gets that dope from the operators, what they call for for the next morning, and he tells me what to give each mine; we have a dope sheet we call it.

Q. Are you supposed to supply the cars in obedience to the orders of the Coal agent at Excelsior?

A. Yes, sir.

[fol. 397] Q. If you should put cars at a place where you were not authorized to put them or where you were directed not to put them, you would be violating the orders of the agent?

A. Yes, sir, any time I do anything like that, I would call him, and then coming along the line something might show up and give me different instructions, if we did not have enough cars to supply the demand, *maby* I would go to Hartford and find cars over there on the transfer and he could and probably would give me other instructions what to do with them.

Q. You would get the cars under his directions?

A. Yes, sir, we were under his directions; whatever he said we had to do.

Q. Whatever the Agent at Excelsior said you had to do?

A. Yes, sir.

Q. You were supposed to obey his orders in that regard?

A. Yes sir.

Q. Do you remember on June 22, 1922, being directed by Floyd Tyler to pull out empty cars from the Jackson Spur?

A. No, sir.

Q. You do not remember that?

A. No, sir.

[fol. 398] Q. Would you say you did not do that?

A. I do not remember taking out any empty coal cars; I took out some box cars.

Q. The box cars were loaded cars?

A. No, sir; we had a system car pulled down there loaded with grain, or corn, and there were two box cars that were sent down there for loading.

Q. Will you say you did not pull out any empty cars from the Jackson Spur, on June 22.

A. I do not remember it if I did; I am pretty sure I did not pull out any empty coal cars. I don't know whether I was working that day or not, because I sometimes lay off.

Q. Any time in June?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You are as certain of that as you are of any other statement you have made?

A. Yes, sir.

Q. Who else was working if you were not working, at that time?

A. If I wanted to lay off I would wire the office at Muskogee and they would send a man down there off of the extra board the chief dispatcher would handle that, and if [fol. 399] I wanted to lay off I would wire him to send a man, and he would send down the first out on the extra board.

Q. You don't remember being off in June?

A. No, sir.

Q. You were working, as far as you remember?

A. Well I cannot say, I don't remember whether I was working that day or not.

Q. You did work in June?

A. I worked some in June, I know, because I never lay off thirty days at one time.

Mr. Pryor:

Q. Have you any record showing whether you worked or were laying off in June, on that date—you have a regular book you keep.

A. Oh, yes.

Q. You keep the number of the run?

A. Yes, sir.

Q. Was that your run, from Hartford to where?

A. Go first to Rock Island, nine miles west of Excelsior and from there to Greenwood, and then I make the Hartford Branch in the afternoon.

Q. You do know one thing, and that is; that you never at any time or place told either one of these plaintiffs that you had stolen any cars for them?

A. Why, No, Sir.

[fol. 400] Floyd Tyler, a witness for the defendant, being sworn testified as follows:

Mr. Pryor:

Q. What is your name, please?

A. Floyd Tyler.

Q. Where do you live?

A. Tulsa, Oklahoma.

Q. Are you connected with the Midland Valley Railroad Company?

A. Yes, sir.

Q. How long have you been connected with that company?

A. About five years.

Q. In what capacity?

A. Telegrapher and clerk.

Q. How long have you been a telegraph operater?

A. What experience?

Q. Yes, sir.

A. I have had about thirteen years' experience.

Q. As operater?

A. Yes, sir.

Q. How old are you?

A. Thirty.

Q. Are you married?

A. No, sir, I am single.

Q. Did you live with your father when you were working at Excelsior?

[fol. 401] A. Yes, sir.

Q. How long did you work at Excelsior?

A. Six months.

Q. In what year?

A. 1922.

Q. What were your duties at that time?

A. Clerical duties.

Q. What sort of clerical duties, clerk in the Station?

A. I was clerk under my father; I was under my father as Clerk and I figured the distribution of cars.

Q. You figured the distribution of cars?

A. Yes, sir.

Q. You assisted him in the distribution of available coal cars in this field?

A. Yes, sir.

Q. When did you come to Excelsior in that year?

A. In March, 1922.

Q. And remained there six months?

A. Yes, sir.

Q. When did you leave there?

A. September 20, 1922.

Q. Did your father leave there before you did?

A. My father left there in March.

[fol. 402] Q. When you went there?

A. Yes, sir.

Q. You succeeded him?

A. No, sir, I did not succeed him. I was placed there as Clerk and he was never relieved of the responsibility of the way the place was conducted.

Q. You were merely clerk?

A. I was merely clerk under him.

Q. Did your father leave there any time during 1922?

A. He left there in March 1922, yes, sir.

Q. Where did he go?

A. He went to Shidelier, Oklahoma, and worked for the Osage Railroad Company.

Q. In 1922?

A. Yes, sir.

Q. That is the Railroad out of Pawhuska?

A. Yes, sir.

Q. Did your father sever his connection with the Midland Valley Railroad Company?

A. No, sir, he held both positions.

Q. You were acquainted with the basis of distribution of coal cars in this field?

A. Yes, sir, not as thoroughly as a person in charge but about as much as a clerk would have knowledge of.

[fol. 403] Q. Would you know upon what the rule of the Interstate Commerce Commission was based for the distribution of coal cars in this field?

A. Well the distribution was based on the mine's ability to load and dispose of the coal.

Q. It does not make any difference what the capacity of the mine was or how many cars *or* placed and pulled out, the cars were charged against it?

A. Yes, sir, they had to be able not only to load this coal but had to be able to sell or dispose of this coal also in order to establish a rating.

Q. It was according to the rules of the Interstate Commerce Commission?

A. Yes, sir.

Q. Were you acquainted with the Fax Coal Company mine near Montreal?

A. Yes, sir, I am acquainted with it and understand the location of part of it outside of the operation in general

such as a person would have need for the proper distribution of coal cars.

Q. Were you in charge of, or received written orders for coal cars from that time during the period of June 22, 1922, until January 1st, 1923?

A. Their manner of handling these reports was very unsatisfactory; they did not turn in reports only just every now and then.

[fol. 404] Q. As a matter of fact the written request ordering cars, or reports which you received was not satisfactory?

A. It was not handled properly. They were mailed to me under special registery, two or three at a time in one envelope.

Q. Who mailed them to you?

A. I believe they came from Greenwood, Mr. Caudle mailed them.

Q. I will ask you if you received any direct requests from the Fax Coal Company for coal cars?

A. No, sir.

Q. For cars?

A. No, sir.

Q. The requests you received were reports that came from the Arkansas Valley Coal Company?

A. Through the Arkansas Valley Coal Company, yes, sir.

Q. The name under which Mr. Caudel does business?

A. Yes, sir.

Q. When were these reports, under the rule of the Interstate Commerce Commission supposed to be handed to you?

A. At 5 P. M.

Q. When did you receive them?

A. I would not receive them until possibly two or three days after they were supposed to be filed with me, and sometimes not at all. And lots of days didn't render any reports.

[fol. 405] Q. Would they have all in the same date or be dated in chronological order?

A. May be one would be dated June 1st, and one would be dated June 4th, and one in June 5th, and one dated June 8th, and all these would be in one envelope.

Q. Did you ever have any telephone conversation with reference to furnishing coal cars for the Fax Coal Company?

A. I may have had two telephone calls from Mr. Caudle.

Q. During the six months?

A. Yes, sir.

Q. Do you remember when these calls were made, in what month?

A. They were after the strike was settled and there was a large demand for coal cars.

Q. You came there in March?

A. Yes, sir.

Q. What time in March?

A. March 19th.

Q. The strike, or suspension of work took place, or effective the first of April?

A. Yes, sir.

Q. And continued until August 23rd?

A. Yes, sir.

[fol. 406] Q. Was it during that period of time that Mr. Caudle telephoned you?

A. No, sir, he did not telephone during that period, we had an ample supply of coal cars and we took out a big bunch of cars, more than they could possibly load in a month and we would fill their spur.

Q. During the period of suspension you used their side track for storage purposes for cars?

A. Yes, sir, because there was no coal shipped, and we needed space to park them.

Q. Where were you, if you recall, June 22, 1922?

A. At Excelsior. Their company had two or three unbilled cars of coal on their spur that had been there several days.

Q. You mean Jackson Spur?

A. Yes, sir; they had been there several days and during that time we were sending a bunch of cars for the P. & G. for gravel loading and also during that time the miners and operators it seemed like, that every paper you would pick up that they were just about to get together. This mine had more unbilled cars of coal out here than they were entitled to; the order said that no mine should

not have on hand over 50% of unbilled cars and they had at least two — three cars and that is two or three hundred per cent of unbilled cars for their mine; and furthermore they [fol. 407] were not turning in reports and I thought I would get in a car and go up and call on them and look over the general position of the mine, so I went out there and went up the road and I missed the road and got to a certain house and there was an old elderly like gentleman——

Q. Mr. Fitzgerald who testified here?

A. I believe it was; I just saw him once; and I asked him to go with me and show me the way to the mine; and he got in the car and I asked him if he had anything to do and he said, No; and I asked him if he would show me the mine and we went around and went in a kind of lane about a quarter of a mile or little over, and got to this mine. When we got there I stopped the car up there and there were two men kind of squatted down about thirty-five feet from there, I went over there and asked who was the manager and they said one of them was the manager, and got up and I began to talk to them.

Q. Which one was there do you know?

A. I do not really remember.

Q. Had you ever seen him before?

A. No, sir, I would not know him if I should see him, I got to talking to him about the reports and they said that Mr. Caudle sent them in, and I told them the manner in which a mine should send in reports and that these reports were not being sent in properly and that they should send [fol. 408] these reports in daily. Of course during this slack period we kept these mines filled; but when this strike was over there would be a shortage of cars and in order for them to get their proportion of cars they would have to turn in their reports like any other mine. Then I asked them about the cars down there. I did not want to tie up too much equipment at that mine and asked them why they did not pull them out and he said that Mr. Caudle had been handling that; and he did not know they had been there and did not know why they had not been pulled our; he guess-they did not have orders. So one word brought on another and I asked him if he would be interested in selling coal to any other parties and he said that he did not know. He

seemed a little bit interested and I told him if he wanted me to, I had no authority to purchase coal from anybody, but if he wanted me to I thought I could put him in connection with a buyer and he seemed interested in it. I don't know whether I turned his name in or not, but I mentioned him about turning in his reports as they should be made.

Q. One of them, I think Mr. Burnett, said that you told him that the coal would be sold to the Muskogee Fue- and Ice Company, do you remember stating anything to him with reference to the Muskogee Ice and Fuel Company wanting coal?

[fol. 409] A. No. I talked to him and told him it was going to the railroad, he understood it was going to the railroad; there was no under-ground work about it. It was straight from the shoulder.

Q. You heard him testify yesterday?

A. Yes, but I have forgotten a large part of it.

Q. Do you remember that part in which he said that you told him it was for the Muskogee Ice and Fuel Company?

A. I heard him say that, but he understood it was going to the railroad. I do not know of anything like that being said.

Q. Did you tell him anything about closing the mine down unless he would seel his coal to the railroad?

A. There was not anything said like that; absolutely nothing said anything like that. Now, they had two hundred per cent of cars unbilled on hand, and it might have been that he construed, or I might have said the rule of the Interstate Commerce Commission shut these mines down when they got over fifty per cent of unbilled cars and they had two hundred per cent unbilled. I may have said that, but that was not any more than the Interstate Commerce Commission put out.

Q. Did you have any authority to buy coal for the Midland Valley Railroad?

A. No, sir. All I did was bring buyer and seller together and I told him before I started in there that I had no authority to buy coal; that I merely brought buyer and seller together and that is what I told him before I started talking to him.

[fol. 410] Q. Did you hear the testimony of Mr. Fitzgerald?

A. Yes, sir.

Q. With reference to the statement that he testified you made at his house after you took him back away from the mine; down in front of his house, while he was still in your car?

A. I could not hardly hear all he said.

Q. Did you state to him anything about pulling cars that was there on the Jackson Spur?

A. No, Sir; I said nothing like that to him; nothing at all. There wasn't anything pulled; these cars were not pulled. There was not any empties taken out of that mine at all and I did not say anything like that to him.

Q. Was there anything taken out of there?

A. After I went to see them they pulled thees loads out.

Q. They did; that day?

A. Yes, sir.

Q. Then there was two or three cars taken out of that spur that evening?

A. I believe they did pull these cars out.

Q. That day?

A. Right away, it was not very long after that until he got rid of these two cars.

Q. That is when they were pulled out?

[fol. 411] A. Yes, that is when they were pulled out; and the empties were not moved, they were left in there for loading, and they were given one hundred per cent car supply all during that time until the strike was settled.

Q. From June 22nd, they were given all the cars they demanded until the strike was over August 23, 1922?

A. Yes, and more too because we put more cars in there than they could possibly have loaded.

Q. Have you a record showing how many cars you actually delivered to them?

A. I believe we did have them here.

Q. Mr. Powers has those records?

A. Yes, sir, I believe so.

Q. That will actually show the number of cars delivered to them and the number they loaded?

A. Yes, sir.

Q. From June 22nd, until the strike was over?

A. Yes, sir.

Q. You left there when?

A. September 20th.

Q. Then Mr. Powers took charge?

A. Yes, sir.

Q. Did you keep a permanent record up to that time of the capacity and the rating of the various mines?

A. Yes, sir.

[fol. 412] Q. There is a permanent record?

A. Yes, sir.

Q. And the number of cars furnished?

A. The number of cars furnished, yes, sir.

Q. And the number of cars loaded?

A. Yes, sir.

Q. And the number of cars billed out?

A. Yes, sir, and the number on hand that was no-billed each day.

Q. The no-billed cars were charged against the rating were they not?

A. Yes, sir.

Q. If you had two loaded cars and if they were not billed in one day they would not be entitled to any more cars under the rule of the Interstate Commerce Commission until these cars were pulled out?

A. Until they were pulled out, until fifty per cent of their rating was left on hand. They would have to pull at least one of these cars before I could give them any cars according to my instructions.

Q. During the period I am asking you about from the time you went there until after the strike was declared off when the Mines resumed operation, there was not any rule in effect so far as the distribution of cars was concerned because you had all the cars the mines wanted, because they were not working?

[fol. 413] A. Ask the question again.

Q. The rules were still in effect but you were not distributing cars during the period of the strike according to the rule as you were distributing cars after the strike was declared off?

A. No sir.

Q. Why?

A. Because we had more cars when the strike was on, had more empty cars, had a surplus, and could adjust it any way we wanted to, but after the strike was over then we had

a larger demand than we could possibly furnish cars for and had to apply the rule and tax all our resources in order to satisfy the different operators.

Q. Then you had to apply the rule to prevent unjust discrimination?

A. Had to apply it right to the letter to prevent discrimination.

Cross-examination.

Mr. Charley Evans:

Q. What position did you hold at Excelsior?

A. Clerk and Telegrapher.

Q. What position did your father hold?

A. Coal agent.

Q. You succeeded him?

A. No, sir, I worked under him.

[fol. 414] Q. Where was he?

A. At Shidlier.

Q. He worked for another railroad company?

A. Yes, sir, he worked for the Midland Valley and Osage at the same time.

Q. He was holding two jobs?

A. Yes, sir.

Q. What job did he hold with the Midland Valley Railroad Company?

A. Coal Agent

Q. Where?

A. At Excelsior.

Q. When a coal operator wanted a car during the time your father was coal agent and was working for this other railroad company in Oklahoma, and you were telegrapher and clerk, please state to the jury the process the operator would go through and the railroad company would go through to get the car?

A. I would merely go to Mr. Tyler's office at Excelsior and turn in a report and I being clerk would have to report daily just like any other clerk would.

Q. What would you do about getting a car to the operator?

A. Then I would issue the necessary instructions to distribute the cars; put out the instructions under Mr. Tyler's name.

Q. What did Mr. Tyler, out in Oklahoma, have to do with it?

A. He had the responsibility connected with it.

[fol. 415] Q. Did you confer with him about — ?

A. I did not confer with him about it.

Q. So during this time when you were under this restricted position of clerk and telegrapher there was there any difference in the process than when Mr. Tyler, the coal agent was there; how would they get car- when Mr. Tyler, the coal Agent was there?

A. When Mr. Tyler, the coal agent was there, he could issue these different instructions himself and consult nobody; whereas, I would issue so far and then when I would get as far as a clerk could go I would then call the chief dispatcher.

Q. How far could a clerk go?

A. Just as far as any clerk; that is indefinite.

Q. What?

A. That is an ambiguous question.

Q. No, it is not an ambiguous question. How far could a clerk go?

A. He could not get very far without any authority.

Q. When a coal operators filed a report for a car you furnished the car if you had it?

A. I issued instructions under my father's name and a car would be furnished if they had it, yes, sir.

Q. What did your father have to do with issuing it, he was in Oklahoma?

A. Yes, but he was boss, that is all I know; I didn't have any authority. I could issue these instructions figure this out concerning the distribution of cars, and I did.

[fol. 416] Q. And the cars were delivered on that?

A. That is right.

Q. The truth of the business is this: That you are trying to escape the responsibility and save the railroad company from the responsibility and liability of your actions by saying you are just a clerk, is not that true?

Mr. Pryor: We object to that question; it is argumentative and wholly improper.

The Court: He would have a right to ask him the question except the manner of doing it.

Mr. Pryor: That is what I am objecting to; the manner of doing it.

July 8, 1925.

FLOYD TYLER testifying:

Mr. Evans:

Q. I understood you to say yesterday afternoon that you went to Excelsior in the employment of the Midland Valley Railroad in March, 1922, is that correct?

A. Yes, sir.

Q. Your father had been agent before there?

A. My father was agent up until September 20th.

Q. What place in Oklahoma was your father working from March 19th, 1922, until September 1922?

[fol. 417] A. He had one office at Shidlier and one at Excelsior.

Q. Where is Shidlier?

A. Shidlier, Oklahoma.

Q. How far from Excelsior?

A. It may be two hundred miles approximately.

Q. Approximately two hundred miles and was working for what railroad?

A. He was working for the Osage and Midland Valley Railroad.

Q. Is there such a railroad—he was working for both railroad companies; he was working for the Osage and Midland Valley Railroad Company?

A. Yes, sir.

Q. And his office was about two hundred miles apart?

A. Yes, sir.

Q. You say you were telegrapher and clerk at Excelsior?

A. Yes, my mother worked one trick and I worked another.

Q. Were there any other agents of the Midland Valley Railroad Company at Excelsior?

A. My father was the only agent that was there.

Q. Was he there during this time?

A. He would make frequent visits to Excelsior; during this time business was slack and it was not necessary for him to make many trips.

Q. He had no business with the Midland Valley Railroad [fol. 418] Company at Excelsior from March 22nd until September? Who did they deal with, when a coal operator or any one ordered a car?

A. They dealt with the agents who had jurisdiction over the mail and there was about seven different agents.

Q. When the five o'clock report was filed at Excelsior *it* who handled it?

A. When the five o'clock report was handled at Excelsior it was handled in Mr. Tyler's office.

Q. Who handled it?

A. Well my mother kept the reports and I kept the reports, both of us handled them.

Q. Mr. Tyler two hundred miles away?

A. Yes, sir, at sometimes and sometimes he was present.

Q. Working for another railroad?

A. He was working for both railroads.

Q. Was he working for two railroads at Shidlier, Oklahoma?

A. He was working for the Osage Railroad at Shidlier and the Midland Valley at Excelsior; but his personal presence and attention was given to the railroad at Shidlier.

Q. But his personal presence and attention was given to the railroad at Shidlier, why?

A. Because there was more business at Shidlier, at that time, than at Excelsior.

Q. There was considerable business at Shidlier?

A. Yes, sir, more business at Shidlier than at Excelsior at the time, and consequently his presence would be more necessary at Shidlier than at Excelsior, and consequently [fol. 419] he would be at Shidlier more than at Excelsior.

Q. When you were given orders of a five o'clock report of the operators wanting coal cars would you direct the conductor some kind of orders just when the cars ought to be set?

A. Yes, sir.

Q. What is that called?

A. Just a common ordinary message.

Q. You would give him a message stating the number of cars and where they should be set, is that correct?

A. With the signature of W. F. Tyler, my father's name, signed to the message.

Q. Who would sign it?

A. I would sign it, or my mother would sign it. If I signed my name to the message it would be of no value whatever; I was nothing but a clerk.

Q. But you did put your signature to it?

A. Sometimes, I did and sometimes my mother did.

Q. Nobody else there except you and your mother could put your signature to it?

A. That is all.

Q. In June 1922, is that the correct date when you paid Mr. Barkley and Burnett a visit to give them some advise and instructions about how to operate this mine and get cars and so on?

[fol. 420] A. I do not think I would call it that, no, sir. It was a business call, and I make hundreds of them every so often, making them all the time.

Q. You are busy at that all of the time.

A. I call on the operators.

Q. You were at that time and before that and after that time and you are still in the employee of the railroad company?

A. I am still telegrapher and clerk.

Q. You have not progressed any?

A. No, sir.

Q. You have not got to be agent yet?

A. Not yet.

Q. So you made this visit there, tell the jury the object of your visit?

A. I visited there, it was purely a business visit. It was for several purposes, generally you might say it included the handling of their reports, they were not turning them in properly under——

Q. Wait a minute let me ask you this: before you made this visit out there had it been the custom for Mr. Caudle to merely call the station at Excelsior and tell them over the phone the number of cars they wanted at this mine?

A. Mr. Caudle was very dilatory——

Q. Answer the question?

A. No, sir.

Q. He had, before that time, been filing these reports?

A. Not properly?

[fol. 421] Q. He had been filing them?

A. No, not all of them, not half of them.

Q. Had he filed any?

A. He had filed some reports; they are on the file right there and the jury had them yesterday.

Q. Go ahead. That is one item?

A. Yes, sir. They had more than their share of unbilled coal on hand. They had two cars of coal on hand loaded and had another car during this time. If you will remember almost every paper you would pick up there were articles dealing with the strike of these various coal operators and miners and you could not tell when they were going to get together, whether it would be days or thirty days from then, and it was necessary to keep track of the no-billed cars so that too much equipment could not be tied up at a mine.

Q. All right?

A. I saw them about their number of no-billed cars they had on hand and they had more than their proportion and they said they would not be able to dispose of it, that Mr. Caudle was not giving them the orders that was necessary to dispose of the coal, and one word brought on another. And then we talked about them selling their coal to the Midland Valley.

Q. That was talked about?

A. Yes, sir.

Q. You went there to straighten them out and get the kinks out of their business and have them mail reports out according to Hoyle?

[fol. 422] A. A general business visit.

Q. You gave them general instructions for them to get these two cars they had loaded there disposed of; and while you were there you did discuss buying the output of this mine for the Midland Valley?

A. I did not discuss it myself. I had no authority to buy coal for the Midland Valley and told them that before I started to discuss the detail, if you might call it that. There wasn't many details to it of their selling their coal to the Midland Valley.

Q. When you get in an automobile and go that distance you have not got any authority to buy any coal?

A. No, sir. I was on the look out for this very thing they are trying to show on me now, and I told them I had no authority to buy their coal before I talked to them.

Q. You gave them to *a* thoroughly understand that you had no authority to buy it?

A. I gave them a thorough understanding that I had no authority to purchase the coal and they knew it.

Q. What were your duties if the Midland Valley wanted to get coal?

A. Merely to bring the buyer and seller together.

Q. You testified in the other trial of this case?

A. I did.

Q. I will ask you if you did not testify that you went out there for the purpose of trying to get them to sell their output of coal?

[fol. 423] A. I did not.

Q. Don't you know in June, 1922, there was a great scarcity of coal?

A. They could not dispose of their coal.

Q. Answer the question?

A. No, I do not know that there was.

Q. Will you say then that is not true?

A. No, sir, I will not. No, sir, I do not know.

Q. Don't you know there was a great scarcity of coal and you had to scout around to get coal for the Midland Valley?

A. I was not; I was bringing the buyer and seller together. I could not purchase coal for the company.

Q. You made a report of that to whom?

A. Mr. De Boise.

Q. You would tell the coal operators what the Midland Valley would get for it?

A. No, sir, I did not. I had nothing to do with that end of the terms of the contract. My duties were merely to bring the buyer and seller together.

Q. From the time the strike was on until it was settled you could not tell what date the strike was going to be settled?

A. Nobody could.

Q. Nobody knew what time a new contract was going to be agreed on.

A. Nobody knew when it would be settled.

Q. You did not know whether it would be the next day after the strike expired or not?

[fol. 424] A. No, sir, I did not know.

Q. That was the condition throughout the entire time, there was no contract between the first day of April and the 22nd day of August?

A. Yes.

Q. There was a negotiation between the parties?

A. Yes, sir.

Q. And they could not tell what day they were going to settle?

A. No, sir.

Q. During this time after the contract expired April 1st, you stated yesterday that you had plenty of cars until the time the contract was renewed in August?

A. Yes, sir.

Q. And you had ample facilities?

A. Yes, sir.

Q. During that time, did you know whether the only coal that was mined was under these utility contracts?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. Under the utility contract like the plaintiffs in this case was operating under?

A. Yes, sir.

Q. You understood that thoroughly at the time?

A. Yes, sir.

Q. And knew all about it, and the Midland Valley had lots [fol. 425] of cars and you had to set them in the side tracks to get them out of the way?

A. Yes, we had some trouble then placing some cars.

Q. You had trouble in placing the extra equipment?

A. Yes, sir.

Q. Please state to the jury—you did get Mr. Fitzgerald to go with you to the mine?

A. Yes, sir.

Q. Please state to the jury the conversation that took place between you and the plaintiffs at the mine?

A. I told that in substance.

Q. Give it exactly?

A. They were sitting on the ground and we talked out there——

The Court: He is going over the same testimony.

Mr. Pryor: Yes, sir, you are going over the same testimony.

Mr. Evans:

Q. I asked him what conversation he had and he stated on direct examination——

The Court: He has a right to cross examine him on it.

Mr. Evans:

Q. I want you to state what that conversation was?

[fol. 426] A. The men were sitting on the ground up there, I walked up to where they were and we begin talking about the general condition affecting the coal car supply for the mine; they were dilatory in furnishing their reports and we talked about that and these cars no-bill, two of them, and another one loaded and we talked about that; and I asked them why they could not pull these cars out and they said they did not have the demand at present, that Mr. Caudle was not handling the cars, that he had been handling them good until that time; he begun to fall down in the last few days and just as soon as he gave them an order they would bill these cars; and then one word brought on another; and then I asked them about furnishing coal to the Midland Valley, if they would be interest- in it and they seemed to be interested. So I mentioned to them and told them about turning their names in and they said go ahead and see, and I do not know whether I went ahead and furnished their names or not. I do not remember about that; and that is about all that there was to the conversation.

Q. They seemed to be interested in furn-ing coal to the Midland Valley?

A. They were interested in it.

Q. They took to the proposition?

A. They were interested in it.

[fol. 427] Q. Explain to the jury how they were interested and why they were interested, when you say you knew they were operating under the utility contract and could not sell their coal to the railroad?

A. They could sell coal to the railroads, that is, there was some coal that Izell sold to the Midland Valley Railroad; of course, I was not concerned with the way they were handling their contract and the way they sold their coal; I did not know anything about this contract for the coal because I did not make the contract and was not concerned with it.

Q. Didn't you swear that you knew they were operating under the public utility contract?

A. Yes, sir.

Q. And knew they were not permitted to sell coal to the railroad?

A. I am not concerned with that; they sold to the Midland Valley railroad.

Q. Who did?

A. Izell did. I do not know whether they did or not. I was not concerned with their contract: I was not anything but a clerk; and I do not know what they did; I did not make the contract.

Q. I am not trying to hold you responsible for that. You knew they were operating under a utility contract, and knew they could not sell their coal to the railroad company?

[fol. 428] A. I did not think anything about that. They seemed interested in it; and surely they must have been able to get around it some way to be interested in it.

Q. What were they interested in. What I want to know is if you told them the Midland Valley would get their coal or you would shut them down, or get them interested?

A. That is not so Mr. Evans.

Q. You did not tell Mr. Barkley and Mr. Burnett and Mr. Fitzgerald that you would close them down if you did not get it?

A. I understand they told that but that is not so.

Q. Did you make that statement to Mr. Fitzgerald?

A. I made no such statement to them. I can possibly explain how the old gentlemen got the inference; he was not acquainted with the car service rule and there might have been something said about shutting them down for having an over supply of no-bills on hand; and the old gentleman not being acquainted with the car service might make the wrong inference.

A. They were sitting on the ground and we talked out there——

The Court: He is going over the same testimony.

Mr. Pryor: Yes, sir, you are going over the same testimony.

Mr. Evans:

Q. I asked him what conversation he had and he stated on direct examination——

The Court: He has a right to cross examine him on it.

Mr. Evans:

Q. I want you to state what that conversation was?

[fol. 426] A. The men were sitting on the ground up there, I walked up to where they were and we begin talking about the general condition affecting the coal car supply for the mine; they were dilatory in furnishing their reports and we talked about that and these cars no-bill, two of them, and another one loaded and we talked about that; and I asked them why they could not pull these cars out and they said they did not have the demand at present, that Mr. Caudle was not handling the cars, that he had been handling them good until that time; he begun to fall down in the last few days and just as soon as he gave them an order they would bill these cars; and then one word brought on another; and then I asked them about furnishing coal to the Midland Valley, if they would be interest- in it and they seemed to be interested. So I mentioned to them and told them about turning their names in and they said go ahead and see, and I do not know whether I went ahead and furnished their names or not. I do not remember about that; and that is about all that there was to the conversation.

Q. They seemed to be interested in furn-ing coal to the Midland Valley?

A. They were interested in it.

Q. They took to the proposition?

A. They were interested in it.

[fol. 427] Q. Explain to the jury how they were interested and why they were interested, when you say you knew they were operating under the utility contract and could not sell their coal to the railroad?

A. They could sell coal to the railroads, that is, there was some coal that Izell sold to the Midland Valley Railroad; of course, I was not concerned with the way they were handling their contract and the way they sold their coal; I did not know anything about this contract for the coal because I did not make the contract and was not concerned with it.

Q. Didn't you swear that you knew they were operating under the public utility contract?

A. Yes, sir.

Q. And knew they were not permitted to sell coal to the railroad?

A. I am not concerned with that; they sold to the Midland Valley railroad.

Q. Who did?

A. Izell did. I do not know whether they did or not. I was not concerned with their contract; I was not anything but a clerk; and I do not know what they did; I did not make the contract.

Q. I am not trying to hold you responsible for that. You knew they were operating under a utility contract, and knew they could not sell their coal to the railroad company? [fol. 428] A. I did not think anything about that. They seemed interested in it; and surely they must have been able to get around it some way to be interested in it.

Q. What were they interested in. What I want to know is if you told them the Midland Valley would get their coal or you would shut them down, or get them interested?

A. That is not so Mr. Evans.

Q. You did not tell Mr. Barkley and Mr. Burnett and Mr. Fitzgerald that you would close them down if you did not get it?

A. I understand they told that but that is not so.

Q. Did you make that statement to Mr. Fitzgerald?

A. I made no such statement to them. I can possibly explain how the old gentlemen got the inference; he was not acquainted with the car service rule and there might have been something said about shutting them down for having an over supply of no-bills on hand; and the old gentleman not being acquainted with the car service might make the wrong inference.

Q. Were you going to shut them down for no-billed cars under the rule of the Interstate Commerce Commission when the siding was full of empty cars?

A. Not as long as these mines were not in operation, but I could not tell when these mines were going to start up operation and when they did it would be necessary because I could not let them run in violation of the Interstate Com-
[fol. 429] merce Commission rule. And I could not explain it to my superiors in office, when they were three hundred per cent no-billed and when under the rule they could not hold but fifty per cent; now, how could I explain that to my superior officer.

Q. I do not know about that; will you say that you did say something to them about shutting them down?

A. There might have been something said about the car service rule shutting them down; I will not say that I did or did not. Evidently there was something like that said because the old man Fitzgerald would not go out and make a mistake of the fact. He possibly heard something of the car service rule and made the wrong inference and that is the only way I can explain it.

Q. During this time did the Midland Valley need any coal?

A. Well, yes, they needed coal, I believe.

Q. Was there any condition of negotiation between the miners and operators June 22nd, that prompted you to go up there?

A. Well yes, there was. For a long time it seemed to me that these miners and operators were just about to get together everyday and it extended over a period of a month, that they were just about to get together.

Q. It exten-ed over two months; you went there in June 1922, and they didn't sign until August 23rd?

[fol. 430] A. There was a considerable time that they were just about to get together.

Q. A little over sixty days?

A. The negotiations extended over a length of time and was going all the time.

Mr. Pryor:

Q. You were familiar with the rule of the Interstate Commerce commission?

A. Yes, sir, I was fairly familiar with that.

Q. Under the rule of the interstate Commerce Commission, if a mine with the capacity of one car a day, had three loaded cars and one car no-billed, could you furnish another car?

A. No, sir, and under the rule I was supposed to shut the mine down just as soon as they had any no-billed cars.

Q. You are not supposed to furnish any more cars?

A. We were supposed not to put any more empties in there until the car was billed.

Q. Therefore the mine would have to close down?

A. Therefore the mine would have to close down.

Q. That was the rule in effect as promulgated by the Interstate Commerce Commission?

A. Yes, sir.

Q. You were asked about a contract entered into between these plaintiffs and Pete Kaughman, did you ever see this contract?

[fol. 431] A. No, sir.

Q. Did you know anything about the existence of that contract at the time you talked to them?

A. No, sir, I never did read it.

Q. When did you first hear of it?

A. Just general rumor is all I know about it.

Q. You did not know that this mine was operating under any such contract did you?

A. Well, I could not tell whether they were or not. I did not know anything about this contract. I didn't know anything about it at all; I did not concern myself with it; it was not my business.

Q. So far as this particular contract was concerned you have no knowledge of it?

A. No, sir.

Q. Just the general rumor that is all?

A. That is just rumor.

Mr. Pryor: We want to introduce in evidence the orders in effect of the Interstate Commerce Commission during this period and some other orders and the rule that was introduced in the trial of this case. First I want to introduce these several sheets as Exhibit "I," which is as follows:

[fol. 432] EXHIBIT "I" IN EVIDENCE

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of notice to carriers and shippers, issued by the Interstate Commerce Commission under date of March 2, 1920, the original of which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 28th day of April, A. D. 1925.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 433] Interstate Commerce Commission, Washington

March 2, 1920.

Notice of carriers and shippers:

The supply of cars available for the transportation of coal is insufficient to meet the demand. Unusual movements incident upon the strike of coal miners has brought about an abnormal location of cars. It is desirable that the proper relocation of cars shall be brought about as rapidly and with as little confusion as is possible. Critical situations still exist in which fuel for essential industries and purposes must be provided. The railroads and the coal operators have all been working under the uniform mine rating and car distribution rules established by the Railroad Administration and those rules seem to be generally satisfactory and to meet with general approval.

To the end that conflicting and contradictory rules on different roads and in different fields may be avoided in the unusual conditions which now exist in the industries and on the roads, the Commission recommends that until experiences and careful study demonstrate that other rules will be more effective and beneficial and especially during the remainder of the early spring the uniform rules as contained in Railroad Administration's Car Service Section Circular CS-31 (Revised) be continued in effect.

George B. McGinty, Secretary.

[fol. 434] Copy

United States Railroad Administration, Director General of Railroads, Division of Operation, Car Service Section

Stamped: Midland Valley R. R. Co. Received May 1, 1925, Office of General Attorney.

Circular CS-31 (Revised).

Washington, December 23, 1919.

To railroads:

The following rules are promulgated to govern uniformly the rating of coal mines (other than anthracite) and car distribution to such mines. They will supersede the rules contained in Car Service Section Circular CS-31, and are to be made effective on all railroads loading coal (other than anthracite) in season to permit car distribution to be made in accordance therewith, beginning January 10, 1920.

Rules for Rating for Car-distribution Purposes Coal Mines (Other Than Anthracite) Loading Coal at Mine Tipples

The following rules shall govern the rating of coal mines (other than anthracite) as the basis for the distribution of empty cars to such mines:

(a) The daily capacity of each mine (other than mines covered by paragraphs b and c shall be determined by taking the total coal ton-age shipped by the mine during the preceding month, dividing it by the number of hours worked [fol. 435] in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized work day (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(b) The daily capacity of a mine which is served jointly by or for two or more carriers (steam, electric, or water) shall be determined by taking the total tonnage shipped by the mine via all such carriers during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the

number of hours in the recognized work day (not more than 10 hours) of the individual mine. The result shall be the basis on which cars shall be distributed to it, provided, that if track or other limiting conditions further restrict its ability to ship via (note a) —— Railroad, such conditions shall be the limiting factor for the (note a) —— railroad's daily rating of such mine.

(c) The daily capacity of a mine delivering part of its output to a coking plant, to locomotives at the tipple, or to local grade shall be determined by taking the total coal tonnage shipped in railroad cars during the preceding month, dividing it by the number of hours worked (see paragraph e), and multiplying the quotient by the number of hours in the recognized work day (not more than 10 hours) of the individual mine. The result shall be termed [fol. 436] the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(d) When the fires are withdrawn from part (or all) of the ovens at an operation coking part of its output, for the purpose of shipping coal production formerly used in charging ovens, the daily rating of the mine shall be increased to include the average tonnage per day so diverted in the previous month until the beginning of the next rating period, at which time the daily rating of the mine shall be determined in accordance with paragraph A or C, due allowance being made for such average tonnage so diver-ed in computing the new daily rating. A corresponding decrease of the mine's rating will be made when the ovens are again placed in blast.

When a mine that has been coking its entire output desires to ship coal and the fires are withdrawn from part (or all) of its ovens, it shall be given a daily rating for coal shipments corresponding to the average tonnage, of coal formerly coked until the beginning of the next rating period, at which time the daily rating of the mines shall be determined in accordance with paragraphs a or c.

(e) In determining the number of hours worked in each day at a mine, time will be counted from the established time for beginning work (or the actual time if earlier or later than the established time) on the tipple until the dump-

ing of coal finally ceases for the day, making deductions for [fol. 437] the noon intermission when it is taken and for the time lost by reason of being blocked with loads, waiting for additional empty cars, or other railroad disability; provided, that if a greater number of hours is worked in the mine than on the tipple, the mine hours must be reported also, and the number of hours worked in the mine must then be used as the number of hours worked in producing the coal (see paragraphs a, b and c) time may be deducted for railroad disability only when such railroad disability actually reduces the quantity of coal dumped that day. Time may be deducted when the tipple is used for dumping coal into locomotives only when the tipple can not be simultaneously operated for loading cars.

(f) Daily ratings determined in accordance herewith will be revised monthly and made effective on the 10th of the month following the month's performance on which the rating is determined.

(g) If a mine be idle for a period of one full calander month or more, the last rating determined will be the rating when work is resumed, provided the mine conditions be substantially the same as when the mine closed.

(h) Rating for development purposes based on current perfor-ance will be assigned to a new operati-n in previously undeveloped coal. A new mine will be furnished with a supply of cars sufficient to enable it *wo* work freely in the course of development for a period not exceeding 6 months after shipments are begun; provided, that if theretofore its ability to load it shall then be rated. A new operation [fol. 438] of any other character shall be entitled to a development rating for a period of one month after shipments are begun.

(i) Each mine shall report on a prescribed form to the — (note b) — promptly at the close of each day—

1. The number of hours in the recognized day;
2. The established time for beginning the day's work;
3. Actual time work was begun this day on the tipple;
4. If the noon hour intermission is taken, how long;
5. Time lost during the day account—

Waiting for railroad cars or other railroad disability .....
Strikes or mine labor shortage ..... — Hours;
Mine di-ability ..... — Hours;
No market ..... — Hours;
All other causes ..... — Hours;

6. Time work on tipple ceased for day;

7. Number of hours worked to-day on the tipple — and in the mine —. (See paragraph e);

8. Number of net tons of coal loaded for shipment via —— (note A) —— Railroad;

9. Total number of net tons of coal produced and shipped via each other outlet;

Joint mines shall furnish this daily report to each carrier serving them.

If after notice from the railroad an operator persistently fails to furnish this daily report, he will be penalized by [fol. 439] curtailment of his car supply to the amount of 25 per cent of distribution for one week.

(j) At the close of each month the mine manager or superintendent in charge of actual operation shall report under oath on a prescribed form to the —— (note b) —— having jurisdiction separately for each mine for each month, as follows:

1. Number of hours in the recognized work day;

2. Total number of net tons of coal produced.

3. Total number of net tons of coal shipped via the —— (note a) —— railroad;

4. Total number of net tons of coal shipped via each other outlet;

5. Total number of hours worked during the month (see paragraph e).

This report must be forwarded not later than the 3r- of the month following that for which the statement is furnished; provided, that where the location of the mine makes it inconvenient to furnish a report under oath by that date, a report not under oath may be forwarded, and the sworn report forwarded not later than one week after. Joint mines shall furnish this monthly report to each carrier serving them.

(k) If an operator declines or persistently fails to make reports or to make accurate reports to the carrier as required herein, it will be assumed that the mine worked full hours in producing and loading into railroad cars the tonnage shipped and the daily rating will be computed accordingly.

[fol. 440] (1) A statement showing the mine ratings which will govern the car distribution for the succeeding month will be furnished as soon as such ratings are ascertained to such coal mines on this railroad as make application for the same. Such statement will show the mine rating of each mine and the total mine ratings of each coal loading district and the aggregate rating for all mines and all districts on this railroad, and the percentage of each such figure to the total.

Note A.—Designate the name of issuing railroad.

Note B.—Designate title of proper officer of issuing railroad.

Rules Governing the Distribution of Cars to Coal Mine Tipples (Other than Anthracite).

Whenever the available car supply in any region (or district) is such that all orders for cars can be filled, cars shall be placed at each mine in accordance with its daily order, except that whenever a mine holds unbilled coal loads, it shall be entitled only to empty cars equal in number to the difference between the rating last established for the mine and the number of unbilled coal loads so held. Whenever the available car supply is such that all orders for car- can not be filled, each mine shall be given its pro rata share of cars in accordance with the following rules:

1. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

[fol. 441] 2. Grouping of mines, or polling of cars as between mines, will not be permitted.

3. On application of mine operators and in the discretion of the railroad, cars may be placed on such days only and at such mines only as may elect to work, and overs and shortages in car supply resulting from this distribution shall be adjusted on succeeding days.

4. Each mine operators shall report to the car distributor at — (note 1) — P. M. daily.

(a) Number of unconsigned loads on hand at 7 A. M.
(b) Number of empty and partly loaded cars on hand at 7 A. M.
(c) Additional number of empty cars received during the day.
(d) Aggregate number of empty cars received during the day.
(e) Number of cars loaded during the day.
(f) Number of empty cars standing over at close of day.
(g) Number of empty cars standing over at close of day which were received prior to 7 A. M. — cars; and prior to 10 A. M. — Cars.
(h) Number of partly loaded cars under tipple at close of day.
(i) Number of unconsigned loads on hand at close of day.
(j) Additional number of empty cars required for loading following day.
(k) Note 2.

Copies of orders for cars for a mine that is joint with any other carrier (steam, electric, or water) shall be filed [fol. 442] with a designated representative of each such carrier. Such combined requisitions must not exceed the gross daily rating of the mine.

5. The recognized standard car for coal car distribution is 50 tons. Others are compared thereto by tenths of a car; i. e. 80,000 pounds capacity equals eight-tenths (.8) of a car; 140,000 pounds capacity one and four tenths (1.4) cars, etc., and cars must be charged and car distribution records maintained accordingly.

6. (a) All cars placed at a mine during each period of 24 hours ending at 10 o'clock A. M. (or when Sunday or Holidays intervene, the longer period ending at 10 o'clock A. M. of the day immediately succeeding the Sunday or holiday) shall be charged against the mine on the day when such period ends; provided, that if the cars placed at 7 o'clock A. M. (not including partly loaded cars) do not equal or exceed in number 25 per cent of the daily rating (or order

if less than the rating) then no cars will be charged against the mine that day except such as are loaded on that day.

(b) Cars placed between 10 o'clock A. M. and the time the mine ceases work for the day, if loaded or partly loaded on the day placed, will be charged against the mine on that day.

(c) All cars of other than railroad ownership (commonly called "private cars") placed for owner's loading will be considered as ordered.

7. The pro rata share of cars to which each mine is entitled except as provided in rule 9, shall be based on its rating (or order when less than its rating). When a mine has empty or partly loaded cars which were placed prior to 7 A. M. or unconsigned loads standing over at the close of the day's business, such cars shall be charged against it [fol. 443] each service day thereafter while they are detained, except as otherwise provided in rule 6.

If on any day a mine be furnished with cars totaling less than 100 per cent of its rating (or order if less than its rating) and for any cause whatever other than railroad responsibility fails to load the entire number, the mine shall be considered as furnished 100 per cent of its requirements, and its order shall be arbitrarily reduced to the number of cars furnished.

8. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

9. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

10. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be en-

titled to receive unassigned cars in addition thereto to make up its pro rata share.

11. If a mine receives more or less cars than it is entitled to during any period, as provided in rule 6 (and after eliminating assigned cars as provided in rule 9), it will be charged with a surplus or credited with a shortage [fol. 444] accordingly, and the discrepancy adjusted as promptly as practicable.

12. A statement showing the car distribution for the preceding month will be furnished as soon as such distribution is ascertained, to such coal mines on this railroad as make application for the same. Such statement will show the car distribution of each mine, the total car distribution of each coal loading district, the aggregate distribution for all mines and all districts, on this railroad, and the percentage of each such figure to the total.

NOTE 1.—Hour may be named by the issuing railroad.

NOTE 2.—Issuing railroad may ask additional necessary information pertaining to car supply.

W. C. Kendall, Manager Car Service Section.

Approved: W. T. Tyler, Director Division of Operation.

[fol. 445] Pursuant to due authority, I hereby certify that the above is a true copy of Unitel States Railroad Administration, Division of Operation, Car Service Section Circular CS-31 (revised), dated December 23, 1919, signed by W. C. Kendall, manager Car Service Section and Approved by W. T. Tyler, Director Division of Operation.

Witness my hand and the seal of the United States Railroad Administration this 28th day of April, 1925.

(Signed) A. W. Stoll, Chief Clerk for James C. Davis, Director General of Railroads.

I also desire to introduce in evidence the following which is marked Exhibit "J2."

[fol. 446] EXHIBIT "J" IN EVIDENCE

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Service Order No. 23, entered July 25, 1922.

Amendment to Service Order No. 23, entered August 4, 1922.

Amendment to Service Order No. 23, entered August 25, 1922.

Amendment to Service Order No. 23, entered August 29, 1922.

Amendment to Service Order No. 23, entered September 1, 1922.

Service Order No. 24, entered August 30, 1922.

Amendment to Service Order No. 24, entered September 18, 1922.

Amendment to Service Order No. 24 entered December 8, 1922.

Service Order No. 25, entered September 19, 1922.

Amendment to Service Order No. 25, entered October 17, 1922.

Amendment to Service Order No. 25, entered November 18, 1922.

Amendment to Service Order No. 25, entered November 23, 1922.

Amendment to Service Order No. 25, entered December 8, 1922.

Service Order No. 26, entered November 22, 1922.

Amendment to Service Order No. 26, entered December 6, 1922.

Service Order No. 27, entered November 28, 1922.

Service Order No. 28, entered November 29, 1922.

[fol. 447] Service Order No. 29, entered December 2, 1922.

Amendment to Service Order No. 29, entered December 11, 1922.

Service Order No. 30, entered December 12, 1922.

Service Order No. 31, entered December 20, 1922.

Service Order No. 32, entered December 30, 1922.

Amendment to Service Order No. 32, entered January 8, 1923.

Service Order No. 33, entered January 6, 1923.

Service Order No. 34, entered January 6, 1923.

Service Order No. 35, entered January 15, 1923.

Service Order No. 36, entered January 15, 1923.

Service Order No. 38, entered February 9, 1923.

Amendment to Service Order No. 38, entered February 26, 1923, and

Service Order No. 39, entered March 5, 1923. The originals of which are now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 22nd day of January A. D. 1925.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 448] Corrected Copy

Service Order No. 23

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 25th day of July, A. D. 1922.

It appearing, in the opinion of the Commission that an emergency which requires immediate action exists upon the lines of each and all the common carriers by railroad subject to the Interstate Commerce Act, east of the Mississippi River, including the west bank crossing thereof, and because of the inability of said common carriers properly and completely to serve the public in the transportation of essential commodities. It is ordered and directed:

1. That each such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities; food for human consumption, feed for live stock, live stock, perishable products, coal, coke and fuel oil.

2. That to the extent any such common carrier by railroad is unable under the existing interchange and car service rules to return cars to its connections promptly, it shall give preference and priority in the movement, exchange, interchange and return of empty cars intended to be used for the transportation of the commodities especially designated in paragraph number 1 hereof.

[fol. 449] 3. That any and all such common carriers by railroad which serve coal mines whether located upon the line or lines of any such railroad or customarily dependent upon it for car supply, herein termed coal-loading carriers, be, and they are hereby, authorized and directed whenever unable to supply all uses in full, to furnish such coal mines with open top cars suitable for the loading and transportation of coal, in preference to any other use, supply, movement, distribution, exchange, interchange or return of such cars; Provided, that the phrase "suitable for the loading and transportation of coal" as used in this order shall not include or embrace flat (fixed) bottom gondola cars with sides less than 36 inches in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service.

4. That all such common carriers by railroad other than coal-loading carriers, herein termed non-coal-loading carriers be and they are hereby, authorized and directed to deliver daily to a connecting coal-loading carrier or carriers, or to an intermediate non-coal-loading carrier, or carriers, empty coal cars up to the maximum ability of each such non-coal-loading carrier to make such deliveries and of each such connecting coal-loading carrier to receive and use the coal cars so delivered for the preferential purposes herein set forth.

[fol. 450] 5. That all such common carriers by railroad be, and they are hereby, authorized and directed to discontinue the use of cars suitable for the loading and transportation of coal, for the transportation of commodities other than coal, so long as any coal mine remains to be served by it with such cars; and as to each non-coal-loading carrier, so long as deliveries of any such cars to connecting

carriers may be due or remain to be performed under the terms of this order.

6. That all such common carriers by railroad be, and they are hereby authorized and directed, to place an embargo against the receipt of coal or other freight transported in open top cars suitable for coal loading, by any consignee and against the placement of such open top cars for consignment to any consignee, who shall fail or refuse to unload such coal or other freight so transported in coal cars and placed for unloading, within 24 hours after such placement, until all coal or other freight so transported in coal cars and so placed has been unloaded by such consignee and shall notify the Commission of such action. This authorization and direction as to embargoes shall not interfere with the movement of coal to tidewater or the Great Lakes for trans shipment by water, nor shall it apply where the failure of the consignee to unload is due directly to errors or disabilities of the railroad in delivering cars.

[fol. 451] 7. That in the supply of cars to mines upon the lines of any coal-loading carrier, such carrier is hereby authorized and directed, to place, furnish, and assign such coal mines with cars suitable for the loading and transportation of coal in succession as may be required for the following classes of purposes, and in following order of classes, namely:

Class 1. For such special purposes as may from time to time be specially designated by the Commission or its agents therefor. And subject thereto:

Class 2. (a) For fuel for railroads and other common carriers, and for bunkering ships and vessels; (b) for public utilities which directly serve the general public under a franchise therefor, with street and interurban railways, electric power and light, gas, water and s-wer words; ice plants which directly serve the public generally with ice, or supply refrigeration for human food stuffs; hospitals; (c) for the United States, state, county, or municipal governments, and for their hospitals, schools, and for their other public institutions—all to the end that such common carriers, public utilities, quasi public utilities, and governments may be kept supplied with coal for current use for

such purposes, but not for storage, exchange or sale and subject thereto:

Class 3: (As to each coal-loading carrier which reaches mines in Pennsylvania, Ohio, West Virginia, Kentucky, Tennessee, and Alabama, for Bituminous coal consigned to any Lake Erie port for trans-shipment by water to ports upon Lake Superior. And Subject thereto:

[fol. 452] Class 4: (As to all such common carriers by railroad) Commercial sizes of coal for domestic use. And subject thereto:

Class 5. Other purposes.

No coal embraced in Classes, 1, 2, 3, 4; shall be subject to reconsignment or diversion except for some purpose in the same class or a superior class in the order of priority herein prescribed.

8. That all rules, regulations and practices of said Common Carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby *me*.

9. That this order shall be effective from and after July 26, 1922, and shall remain in force until the further order of the Commission.

10. That copies of this order be served upon the carriers hereinbefore described, and that notice of this order be given to the general public by posting a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 453] Amendment No. 1 to Service Order No. 23

At a Session of the Interstate Commerce Commission Division 5, held at its office in Washington, D. C. on the 4th day of August, A. D. 1922.

It is ordered. That paragraph numbered 7 of the said Service Order No. 23, adopted July 25, 1922, be and it is hereby amended and supplemented to read as follows, effective on and after August 5, 1922:

"7. That in the supply of cars to mines upon the lines of any coal-loading carrier, such carrier is hereby authorized and directed, to place, furnish, and assign such coal mines with cars suitable for the loading and transportation of coal in succession as may be required for the following classes of purposes, and in the following order of classes, namely:

Class 1. For such special purposes as may from time to time be specially designated by the commission or its agent therefor, in designating special purposes under this reservation, the commission or its agent will designate the class or relative priority, as Class 1, Class 2, Class 3, Class 4, or Class 5, which such special purpose or particular shipment or shipments shall receive.

And subject thereto in order of priority:

Class 2. (a) For fuel for railroads and other common carriers, and for bunkering ships and vessels; (b) for public utilities which directly serve the general public under a francise therefor, *which* street and interurban railways, electric power and light, gas, water, and sewer works; ice [fol. 454] plants which directly serve the public generally with ice, or supply refrigeration for human food stuffs; hospitals; (c) for the United States, state, county, or municipal governments, and for their hospitals, schools, and for their other public institutions—all to the end that such common carriers, public utilities, quasi-public utilities, and governments may be kept supplied with coal for current use for such purposes, but not for storage, exchange or sale; (d) bitum-ous coal which has passed over the screens of four inches or larger opening, coke, and anthracite coal, to be shipped to retail dealers for household use.

Note: It is not intended by this paragraph to give any priority as between classes A, b. c. and d Hereof.

And subject thereto in order of priority.

Class 3. (As to each coal-loading carrier which reaches mines in Pennslyvania, Ohio, West Virginia, Kentucky, Tennessee, and Alabama) for bituminous coal consigned to any lake Erie port for trans-shipment by water to port upon lake Superior.

And subject thereto in order of priority;

Class 4. (As to all such common carriers by railroad) Coal for the production and manufacture of food stuffs

and medicines and for the manufacture of containers therefor, for daily use but not for storage, exchange, or sale.

And subject thereto in order of priority.

[fol. 455] Class 5. Other purposes.

No coal embraced in classes 1, 2, 3, 4, shall be subject to reconsignment or division except for some purpose in the same class or a superior class in the order of priority herein prescribed.

For the more prompt and effectual administration during the present emergency of the authorizations, directions, and requirements of this paragraph No. 7, the following persons are designated and appointed as agents of the Commission, with authority to give directions as to car service and to the matters referred to in paragraphs (15) and (16) of section 1 of the Interstate Commerce Act, and referred to in this paragraph No. 7 *vis*; John C. Roth, Director, and E. J. DeGrott, Assistant Director, Frank C. Smith, Chief Inspector of the Bureau of Service of the Commission, and S. J. Mayhood, B. S. Robertson, C. C. Semple, W. L. Barry, O. S. Reynolds, H. M. Priest, J. B. Ford and the directions so given by them shall be regarded as directions of the commission."

And it is further ordered: That copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

[fol 456] By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 457] Amendment No. 2 to Service Order No. 23

Order

At a session of the Interstate Commerce Commission, division 5, held at its office in Washington, D. C. on the 15th day of August, A. D. 1922.

The matter of designation and appointment of additional agents of the commission for the more prompt and effectual administration during the present emergency of the authorizations, directions and requirements of Paragraph 7 of Service order No. 23, as amended being under consideration;

It is ordered, that the last paragraph of paragraph 7 of Service Order No. 23 as amended, be, and the same is hereby further amended by inserting after the name "J. B. Ford" and prior to the word "And" the following additional names: John T. Marchand, J. A. Emmart, W. L. Loyd, A. R. Layman, Delbert Garman, F. F. Engles, L. P. Green, T. L. Stevens, C. J. Bailey, C. D. Thomas, W. S. Rice and W. D. Anderson.

And it is further ordered, That copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of the commission at Washington, D. C.

By the Commission, division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 458] Amendment No. 3 to Service Order No. 23

Order

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 25th day of August, A. D. 1922.

The matter of designation and appointment of additional agents of the commission for the more prompt and effectual administration during the present emergency of the authorization, directions and requirements of paragraph 7 to Service Order No. 23, as amended being under consideration:

It is ordered, That the following named persons be and they are hereby designated and appointed as additional agents of the commission with authority to give directions as to car service and to the matters referred to in paragraphs (15) and (16) of section 1 of the interstate commerce act, and referred to in paragraph No. 7, viz; W. B. Moore, J. Patterson, J. F. Stequart, John E. Barr, Wm. J. Kiniry, T. J. Davis, T. F. Sullivan.

And it is further ordered; that copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of the commission at Washington, D. C.

By the Commission Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 459] Amendment No. 4 to Service Order No. 23

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 29th day of August, A. D. 1922.

It is ordered; That paragraph number 7 of the said service order No. 23, adopted July 25, 1922, as subsequently amended, be, and it is hereby further amended and supplemented to read as follows, effective on and after August 30, 1922:

"7. That in the supply of cars to mines upon the lines of any coal-loading carrier, such carrier is hereby authorized and directed, to place, furnish, and assign such coal mines with cars suitable for the loading and transportation of coal in succession as may be required for the following classes of purposes and in the following order of classes, namely:

Class 1. For such special purposes as may from time to time be specially designated by the commission or its agent therefor. In designating special purposes under this reservation, the commission or its agent will designate the class or relative priority which such special purpose or particular shipment or shipments shall — received.

And subject thereto in order of priority.

Class 2. For fuel for railroads and other common carriers, and for bunkering ships and vessels; for public [fol. 460] utilities which directly serve the general public under a franchise therefor, with street and interurban railways, electric power and light, gas, water, and sewer works, ice plants which directly serve the public generally with ice, or supply refrigeration for human food stuffs; hospitals; for the manufacture and production of food stuffs and medicines and for the manufacture of containers therefor; for the United States, state, county, or municipal governments, and for their hospitals, schools and other public institutions—all to the end that the foregoing may be kept supplied with coal for current use for such purposes, but not for storage, exchange, or sale; for bituminous coal consigned to a pool or pools of lake cargo or bunkerage coal at any port upon Lake Erie for trans-shipment by water to ports above Lake Erie; bituminous or anthracite coal, or coke for household use and for the heating of buildings. It

is not intended by this paragraph to give any priority as between the classes of persons and uses mentioned herein.

Class 3. Other purposes.

No coal embraced in Classes 1 or 2 shall be subject to reconsignment or diversion except for some purpose in the same class or a superior class in the order of priority herein prescribed.

For the more promptly and effectual administration during the present emergency of the authorizations, directions [fol. 461] and requirements of this paragraph No. 7, the following persons are designated and appointed as agents of the commission, with authority to give directions as to car service and to the matters referred to in paragraphs (15 and 16) of section 1 of the interstate commerce act, and referred to in this paragraph No. 7, viz: John C. Roth, Director, and E. H. DeGroot, assistant director, Frank C. Smith, Chief Inspector of the Bureau of Service of the Commission, and S. J. Mayhood, B. S. Robertson, C. C. Semple, W. L. Barry, O. S. Reynolds, H. M. Priest, J. B. Ford, John T. Marchand, J. A. Emmart, W. L. Lloyd, A. R. Layman, Delbert Garman, F. F. Engles, L. P. Green, T. L. Stevens, C. J. Bailey, C. D. Thomas, W. S. Rice, W. D. Anderson, W. B. Moore, J. Patterson, J. F. Stewart, J. E. Barr, W. M. J. Kiniry, T. J. Davis, T. F. Sullivan, and the directions so given by them shall be regarded as directions of the Commission.

And it is further ordered. That copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 462] Amendment No. 5 to Service Order No. 23

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 1st day of September, A. D. 1922.

It is Ordered, that the provisions in service Order No. 23, entered July 25, 1922, which reads:

"Provided, that the phrase 'Suitable for the loading and transportation of coal' as used in this order shall not in-

clude or embrace flat (fixed) bottom gondola cars *which* sides less than 36 inches in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service" be and it is hereby, amended effective at midnight of September 3, 1922, to read:

"Provided, that the phrase 'Open top cars suitable for the loading and transportation of coal' as used in this order shall not include or embrace flat (fixed) bottom gondola cars with sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

And it is further ordered: That copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of [fol. 463] the secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 464] Service Order No. 24

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 30th day of August, A. D. 1922.

It Appearing, in the opinion of the Commission that an emergency which requires immediate action exists upon the lines of each and all the common carriers by railroad subject to the Interstate Commerce Act, West of the Mississippi rive-, and because of the inability of said common carriers properly and completely to serve the public in the transportation of essential commodities.

It is ordered and directed: 1—That each such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each

of the following commodities; Food for human consumption; feed for live stock; live stock; per-shable products, and fuel.

2. That to the extent any such common carrier by railroad is unable, under the existing interchange and car service rules, to return cars to its connections promptly, it shall give preference and priority in the movement, exchange, interchange and return of empty cars intended to be used for the transportation of the commodities specially designated in paragraph Numbered 1, hereof.

[fol. 465] 3. That all rules, regulations and practices of said common carriers by railroad with respect to car service and that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

4. That this order shall be effective from and after September 1, 1922, and shall remain in force until the further order of the commission.

5. That copies of this order be served upon the carriers hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 466] Amendment No. 1 to Service Order No. 24

At a session of the interstate commerce Commission, Division 5, held at its office in Washington, D. C. on the 19th day of September, A. D. 1922.

It is ordered. That paragraph 1 of said service order No. 24, which reads:

"1. That each such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities;

Food for human consumption, feed for live stock, live stock, perishable products, and fuel" be and it is hereby

amended effective at midnight September 20, 1922, so as to read:

"1. That each common carrier by railroad, to the extent that it is currently unable promptly to transport all freights traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities: Food for human consumption, feed for live stock, live stock, perishable products, mine supplies, medicines, fertilizers, seed, newsprint paper, coal, coke and other fuel and petroleum and its products in tank cars."

[fol. 467] And it is further ordered; that copies of this order be served upon the carriers upon whom Service Order No. 23 was served, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the commission at Washington, D. C.

By the Commision, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 468] Amendment No. 2 to Service Order No. 24

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 8th day of December, A. D. 1922.

It appearing. That the emergency which caused the commission on the 30th day of August, 1922, to make and enter its Service Order No. 23 and the amendment thereto made and entered on the 10th day of September, 1922, has been measurably relieved.

It is ordered; that said service Order No. 23, as amended, be, and the same is hereby, vacated and set aside effective at Midnight December 11, 1922.

It is further ordered: That copies of this order be served upon the carriers upon which Service Order No. 24 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of this commission.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 469] Corrected Copy. Service Order No. 25

At a session of the Interstate Commerce Commission, Division, 5, held at its office in Washington, D. C. on the 19th day of September, A. D. 1922.

It appearing. In the opinion of the commission that an emergency which requires immediate action exists upon the lines of each and all the common carriers by railroad subject to the Interstate Commerce Act, east of the Mississippi River, including the West bank crossings thereof, and because of the inability of said common carriers properly and completely to serve the public in the transportation of essential commodities. It is ordered and directed; that Effective September 21, 1922, and until the further order of the commission:

1. That each such common carriers by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railroad shall give preference and priority to the movement of each of the following commodities; food for human consumption, feed for live stock, live stock, perishable products, mine supplies, medicines, fertilizers, seeds, news print paper, coal, coke and other fuel, and petroleum and its products in tank cars.

2. That to the extent any such common carrier by railroad is unable under the existing interchange and car serv-[fol. 470] ice rules, to return cars to its connections promptly, it shall give preference and priority in the movement, exchange, interchange and return of empty cars intended to be used for the transportation of the commodities specially designated in paragraph numbered 1 hereof.

3. That any and all such common carriers by railroad which serve coal mines whether located upon the line or lines of any such railroad or customarily dependent upon it for car supply herein termed coal-loading carriers, be, and they are hereby, authorized and directed whenever unable to supply all uses in full, to furnish such coal mines with open top cars suitable for the loading and transportation of coal, in preference to any other use, supply, or distribution of such cars; provided, that the phrase "open

top cars suitable for the loading and transportation of coal" as used in this order shall not include or embrace flat (fixed) bottom gondola cars with sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service.

4. That all such common carriers by railroad other than coal-loading carriers, herein termed non-coal-loading carriers, be, and they are hereby, authorized and directed to deliver daily to a connecting coal-loading carrier or carriers, or to an intermediate non-coal-loading carrier for [fol. 471] delivery through the usual channels to a coal-loading carrier, or carriers, empty coal cars up to the maximum ability of each such non-coal-loading carrier to make such deliveries and of each such connecting coal-loading carrier to receive and use the coal cars so delivered for the preferential purposes herein set forth.

5. That all such common carriers by railroad be, and they are hereby authorized and directed to discontinue the use of open top cars suitable for the loading and transportation of coal, for the transportation of commodities other than coal, so long as any coal mine remains to be served by it with such cars; and as to each non-coal-loading carrier, so long as deliveries of any such cars to connecting carriers may be due or remain to be performed under the terms of this order; provided, that such open-top cars suitable for the loading and transportation of coal, after the discharge of the coal loading thereof, may be used for the transportation of road building construction materials, ore, mine supplies for current operation and fluxing stone for furnaces when the destination of such materials is in the direction of but not beyond the mine or mines to which such open-top cars are destined for coal loading, and when such use will not materially delay or minimize the production and transportation of coal; provided, further that an embargo be placed against the further placement of open-[fol. 472] top cars for loading with such commodities for any shipper who shall fail or refuse to load the open-top cars within 24 hours after placement for such loading thereof.

6. That all such common carriers by railroad be, and they are hereby authorized and directed, to place an embargo against the receipt of coal or other freight transported in open top cars suitable for coal loading, by any consignee, and against the placement of such open top cars for consignment to any consignee, who shall fail or refuse to unload such coal or other freight so transported in coal cars and placed for unloading, within 24 hours after such placement, until all coal or other freight so transported in coal cars and so placed has been unloaded by such consignee and shall notify the commission of such action. This authorization and directions as to embargoes shall not interfere with the movement of coal to tidewater or the Great Lakes for trans-shipment by water, nor shall it apply where the failure of the consignee to unload is due directly to errors or disabilities of the railroad in delivering cars.

7. That in the supply of cars to mines upon the lines of any coal-loading carrier, such carrier is hereby authorized and directed, to place, furnish, and assign such coal mines with open-top cars suitable for the loading and transportation of coal for such special purposes as may from time [fol. 473] to time be specially designated by the commission or its agents therefor by special priority direction in writing, in preference and priority to any other use; provided, that the open-top cars so placed, furnished, and assigned, shall after loading be transported for the special purposes designated, and shall not be subject to reconsignment or diversion except by and with the approval of the commission.

For the more prompt and effectual administration during the present emergency of the authorizations, directions and requirements of this paragraph No. 7, the following persons are designated and appointed as agents of the commission, with authority to give directions as to car service and to the matters referred to in paragraphs (15) and (16) of Section 1 of the Interstate Commerce Act, and referred to in paragraph 7, viz: John C. Roth, Director, E. H. De Groot, Jr., assistant Director, Frank C. Smith, Chief Inspector, and B. S. Robertson, Service Agent, of the Bureau of Service of the Commission, and the directions so given by them shall be regarded as directions of the commission.

8. That all rules, regulations and practices of said Common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

[fol. 474] 9. That service Order No. 23, as amended, be, and the same is hereby, suspended and superseded, effective at midnight September 20, 1923.

10. That copies of this order be served upon the carriers hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 475] Amendment No. 1 to Service Order No. 5

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 17th day of October, A. D. 1922.

It is ordered. That said Service Order No. 25, be, and the same is hereby, amended and supplemented in the following respects.

(1) By adding to paragraph 3 thereof an additional proviso as follows:

"Provided further, that from and after October 23, 1922, the supply and distribution of open top cars suitable for the loading and transportation of coal to wagon mines shall be subject to the following rule:

Upon any day when any such common carrier by railroad is unable to supply mines upon its line with the required number of open top cars, such cars shall not be furnished or supplied by it to any mine which customarily does not load or is unable to load any such cars with coal within 24 hours from and after the time of placement until all mines upon the line of any such carriers have been fully supplied with such cars."

(2) That the proviso in paragraph 5 of said order which reads:

[fol. 476] "Provided, that such open top cars suitable for the loading, and transportation of coal, after the discharge of the coal loading thereof, may be used for the transportation of road building construction materials, ore, mine supplies for current operation and fluxing stone for furnaces when the destination of such materials is in the direction of but not beyond the mine or mines to which such open top cars are destined for coal loading, and when such use will not materially delay or minimize the production and transportation of coal," be and the same is hereby, amended effective forthwith to read:

"Provided, that such open top cars suitable for the loading and transportation of coal, after the discharge of the coal l-ading thereof, may be used for the transportation of road and building construction materials, ore, mine supplies for current operation, fluxing stone for furnaces, foundry sand, and materials for cars and locomotive construction or repair, when the destination of such materials is in the direction of and not beyond the mine or mines to which such open top cars are destined for coal loading, and when such use will not materially delay or minimize the production and transportation of coal.

And it is further ordered; that copies of this order be served upon the carriers upon whom Service Order No. 25 was served, and that notice hereof be given to the general [fol. 477] public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 478] Amendment No. 2 to Service Order No. 25

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 18th day of November, A. D. 1922.

Good cause appearing therefore, it is ordered that service Order No. 25, made and entered September 19, 1922, as amended October 17, 1922, be further amended by adding the following paragraphs.

From and after November 20, 1922, the provisions of paragraph- numbered 3, 4, 5, 6, and 7 hereof shall be sus-

pended and will not apply to lines and portions of lines of common carriers by railroad situated south of the Ohio River and of the Potomac River, theretofore subject to the operation of said paragraphs, except the Baltimore & Ohio Railroad.

This order will not operate to suspend or vacate directions for special priority heretofore given under the provisions of paragraph No. 7 hereof which have not been fully executed, and any and all such directions will continue in effect until fully executed.

It is further ordered that copies of this order be served upon the carriers upon whom Service Order No. 25 was served, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 479] Amendment No. 3 to Service Order No. 25

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 23rd day of November, A. D. 1922.

Good cause appearing therefore: It is ordered. That the proviso in paragraph 3 of Service Order No. 25, made and entered September 19, 1922, as amended, which reads:

"Provided, that the phrase "Open top cars suitable for the loading and transportation of coal" as used in this order shall not include or embrace flat (fixed) bottom gondola cars with sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, has been definitely retired from service for the transportation of coal and stenciled or tagged for other service," be, and the same is hereby amended effective at midnight November 25, 1922, to read:

"Provided, that the phrase "Open top cars suitable for the loading and transportation of coal" as used in this order shall not include or embrace flat (fixed) bottom gondola cars with sides 48 inches or less in height, inside measurement, or cars equipped with racks, or cars which, on July 1, 1922, had been definitely retired from service

for the transportation of coal and stenciled or tagged for other service."

[fol. 480] And it is further ordered. That copies of this order be served upon the carriers upon whom Service Order No. 25 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

By the Commission Division 5.

George B. McGinty, Sec. (Seal.)

[fol. 481] Amendment No. 4 to Service Order No. 25

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 8th day of December, A. D. 1922.

It appearing. That the emergency which caused the commission on the 19th day of September, 1922, to make and enter its service order No. 25, and the amendments thereto made and entered on the 17th day of October, 18th of November and 23rd of November, 1922, has been measurably relieved.

It is ordered, That said Service Order No. 25, as amended, be, and the same is hereby, vacated and set aside effective at midnight December 11, 1922.

It is further ordered, That copies of this order be served upon the carriers upon which Service Order No. 25 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of this Commission.

By the Commission, Division No. 5.

George B. McGinty, Secretary. (Seal.)

[fol. 482] Service Order No. 26

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 22nd day of November, A. D. 1922.

It appearing, in the opinion of the commission that an emergency which requires immediate action exists upon the lines of the common carriers by railroad subject to the Interstate Commerce Act hereinafter named, because of the

inability of said common carriers properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given. It is ordered and directed, that effective November 24, 1922, and until the further order of the commission, or until the directions hereby given are fully performed:

1. That in the supply of cars to mines upon the lines of the common carriers by railroad hereinafter named, each such common carrier is hereby authoriezd and directed to place, furnish, and assign the coal mines herein named with open-top cars suitable for the loading and transportation of coal in the quantities and at the rate specified, for transportation to points in Virginia when consigned to the Commonwealth of Virginia, Purchasing Commission, in preference and priority to any other placement or use of such open-top cars; Provided, that the open-top cars so placed, [fol. 483] furnished, and assigned, shall be counted against the distributive share allot-ed to the mines herein named and shall, after loading, be transported only for the special purpose herein designated, and shall not be subject to reconsignment or diversion except by and with the approval of the commission.

Carrier: Greenbrier & Eastern Railroad Company.

Shipper: Eastern Coal and Export Co.

Location of Mine: Greenbrier Smokeless Coal Co., Bellburn, W. Va.

Carrier: The Chesapeake & Ohio Railroad Company.

Shipper: Easter- Coal & Export Corporation.

Location of Mine: Blue Jay Lumber Co., Blue Jay, W. Va.

Carrier: Norfolk & Western Railway Co.

Shipper: Garland-Pocahontas Coal Co.

Location of Mine: English, W. Va., Post Office Avondale, W. Va. Shipment to be at the rate of 4 cars per day for 10 consecutive working days, for each of such mines.

2. That all rules, regulations, and practices of said Common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copies of this order be served upon the carriers hereinbefore described, and upon the Common Wealth of Virginia by delivery of a copy hereof by registered mail to the Governor thereof, and that notice of this order be given to the general public by depositing a copy hereof in the [fol. 484] office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 485] Amendment No. 1 to Service Order No. 26

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 6th day of December, A. D. 1922.

It appearing, that the emergency which prompted the issuance of Service Order No. 26, has been relieved, and it further appearing that certain open top cars placed, furnished, and assigned at the coal mines therein named in accordance with the terms of that order, are under load at such mines and the Federal Fuel Distributor having recommended the issuance of directions as hereinafter given:

It is ordered. That said service order No. 26, be, and the same is hereby suspended, and that the coal cars so placed, furnished, and assigned, under the terms of said order and now under load may be consigned for other uses than those specified in said order.

It is further ordered, That copies of this order be served upon the carriers hereinbefore described, and upon the Commonwealth of Virginia by delivery of a copy hereof by registered mail to the Governor thereof, and that notice of this order be given to the general public by depositing a copy hereof in the office of the secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 486] Service Order No. 27

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 28th day of November A. D. 1922.

It appearing, In the opinion of the Commission that an emergency which requires immediate action exists upon the line of the Baltimore and Ohio Railroad Company because of the threatened destruction by fire of a large stock pile of bituminous coal, and the Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given.

It is ordered and directed:

1. That effective November 28th, 1922, the Baltimore and Ohio Railroad Company place, furnish, and assign open top cars suitable for the loading and transportation of coal at the mine of the Elkhorn Piney Coal Manufacturing Company, located on the Long Fork Branch of the said Baltimore and Ohio Railroad, at Weeksbury, Ky., for the loading of coal now in stock pile, at the rate of 30 cars per day for each consecutive working days until a total of 250 cars are so placed, furnished, and assigned: provided, that the open top cars so placed, furnished, and assigned shall be counted against the distributive share allot-ed to the mine hereinbefore named.

2. That all rules, regulations, and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspen-ed so far as they conflict with the directions hereby made.

[fol. 487] 3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5;

George B. McGinty, Secretary. (Seal.)

[fol. 488] Service Order No. 28.

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 29th day of November A. D. 1922.

It appearing, in the opinion of the commission that an emergency which requires immediate action exists upon the line of the Chesapeake & Ohio Railway Company, because of the inability of said carrier properly and completely to

serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to to the Commission the issuance of directions as hereinafter given. It is ordered and directed, that effective December 1, 1922, and until the further order of the commission, or until the directions hereby given are fully performed:

1. That in the supply of cars to mines upon the line of the Chesapeake & Ohio Railway Company said Company is hereby authorized and directed to place, furnish, and assign to the coal mine of Rhodell Coal Company located at Rhodell, W. Va., open top cars suitable for the loading and transportation of coal at the rate of our cars per day for a period of ten consecutive working days, for transportation to points in Virginia, when consigned to the Commonwealth of Virginia, Purchasing Commission, in preference and priority to any other placement or use of such open top cars; provided, that the open-top cars so placed furnished, and assigned, shall be counted against [fol. 489] the distributive share allotted to the mine herein named and shall after loading be transported only for the special purpose herein designated, and shall not be subject to reconsignment or diversion except by and with the approval of the commission.

2. That all rules, regulations, and practices of said common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copies of this order be served upon the carrier hereinbefore described, and upon the Commonwealth of Virginia by delivery of a copy hereof by registered mail to the Governor thereof, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 490] Service Order No. 29

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 2nd day of December A. D. 1922.

It appearing, In the opinion of the Commission that an emergency which requires immediate action exists upon the line of the Missouri Pacific Railroad Company because of the inability of said railroad properly and completely to serve the public in the transportation of anthracite coal, and the Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given. It is ordered and directed:

1. That effective December 4, 1922, the Missouri Pacific Railroad Company place, furnish, and assign open top cars suitable for the loading and transportation of anthracite coal to mine in the so-called Spadra District on the line of said railroad at the rate of 40 cars per day for a period of 10 consecutive days; provided, that the open top cars so placed, furnished, and assigned shall be counted against the distributive shares allot-ed to the mines in said district.

2. That all rules, regulations and practices of said Common Carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

[fol. 491] 3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 492] Amendment No. 1 to Service Order No. 29

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 11th day of December, A. D. 1922.

The Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given and good cause appearing therefor, it is ordered and directed.

1. That effective December 12, 1922, the Missouri Pacific Railroad Company place, furnish, and assign open top cars suitable for the loading and transportation of anthracite coal to the Bernice Mines on the line of said railroad at the rate of 10 cars per day for a period of 5 consecutive days; provided, that the open top cars so placed, furnished and assigned shall be counted against the distributive shares allot-ed to the mines in said district.

2. That all rules, regulations and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary (Seal.)

[fol. 493] Service Order No. 30

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 12th day of December, A. D. 1922.

It appearing in the opinion of the commission that an emergency which requires immediate action exists upon the lines of the Huntington & Broad Top Mountain Railroad & Coal Company because of the inability of said Railroad properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributer having recommended to the commission the issuance of directions as hereinafter given. It is ordered and directed, that effective December 14, 1922 and until the further order of the Commission, or until the directions hereby given are fully performed:

1. That in the supply of cars to mines upon the line of The Huntington & Broad Top Mountain Railroad & Coal Company said carier shall place, furnish, and assign open top cars suitable for the loading and transportation of coal at the Shreeve Run mine of the James M. Mcintyre & Company at the rate of 10 cars per day for 10 consecutive work-

ing days, and to the Kearney-Barnett Mines of Joseph E. Thropp at the rate of 4 cars per day for 15 consective working days when consigned to the United States Army and *voered* by government bills of lading, in preference and [fol. 494] priority to any other placement or use of such open top cars; provided, that the open top cars so placed, furnished, and assigned shall be counted against the distributive shares allot-ed to the mines hereinbefore named.

2. That all rules, regulations and practices of said Common carrier by railroads with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 495] Service Order No. 31

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 20th day of December, A. D. 1922.

It appearing. In the opinion of the commission that an emergency which requires the immediate action exists upon the lines of the Pennsylvania Railroad Company because of the inability of said railroad properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given. It is ordered and directed, That effective December 22, 1922 and until the further order of the commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the lines of the Pennsylvania Railroad Company said carrier shall place furnish, and assign open top cars suitable for the loading and transportation of bituminous coal at the mine of Commercial Coal Mining Company located at Twin Rocks, Pa., at the rate of 3 cars per day f*ro* 15 consecutive

days, when consigned to the Government Fuel Yards, Washington, D. C., in preference and priority to any other place-
[fol. 496] ment or use of such open top cars, provided that the open top cars so placed, furnished and assigned shall be counted against the distributive share allot-ed to the mine hereinbefore named.

2. That all rules, regulations and practices of said common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 497] Service Order No. 32

At a Session of the Interstate Commerce Commission Division 5, held at its office in Washington, D. C. on the 30th day of December, A. D. 1922.

It appearing, in the opinion of the commission that an emergency which requires immediate action exists upon the lines of the common carriers by railroad subject to the Interstate Commerce Act hereinafter named, because of the inability of said Common carriers properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recomended to the Commission the issuance of directions as hereinafter given. It is ordered and directed, that effective January 2, 1923, and until the further order of the Commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the lines of the common carriers by railroad hereinafter named, each such common carrier is hereby authorized and directed to place, furnish and assign the coal mines herein named with hopper-bottom cars suitable for the loading and transportation of coal in the quantities and at the rate specified when

consigned to the Government Fuel Yards, Washington, D. C. in preference and priority to any other placement or use of such hopper-bottom cars; provided; that the hopper-bottom cars so placed, furnished or assigned, shall not be counted against the distributive share allot-ed to the mines herein named, except as to cars so placed, furnished, or [fol. 498] assigned to the Hagevo mine; and provided further; that the cars so placed, furnished, or assigned to the Hagevo mine shall be counted against the distributive share to be allot-ed to such mine; and provided further that cars so placed, furnished, or assigned at any of said mines shall after loading be transported only for the special purpose herein designated, and shall not be subject to reconsignment of diversion except by and with the approval of the commission.

Carrier: The Chesapeake & Ohio Railway Company.
Shipper: E. B. White Coal Company.
Location of Mine: Geln White, W. Va.
Carrier: The Chesapeake & Ohio Railway Company.
Shipper: E. B. White Coal Company.
Location of Mine, Stotesbury, W. Va.
Carrier: The Chesapeake & Ohio Railway Company.
Shipper: East Gulf Coal Company.
Location of Mine: Helen, W. Va.
Carrier: The Chesapeake & Ohio Railway Company.
Shipper: White Oak Coal Company.
Location of Mine: Sprague, W. Va.

Shipments to be at the rate of 5 cars per day for 10 consecutive working days, for each of such mines.

Carrier: The Pennsylvania Railroad Company.
Shipper: Arrow Coal Mining Company.
[fol. 499] Location of Mine: Arrow No. 5, Mine Reitz, Pa.

Shipments to be at the rate of 5 cars per day for 5 consecutive working days.

Carrier: The Pennsylvania Railroad Company,
Shipper: Emerson & Morgan Coal Mining Corporation.
Location of mine: Hagevo Mine, Pa.

Shipments to be at the rate of 6 cars per day for 10 consecutive working days.

Carrier: The Baltimore & Ohio Railroad Company.
Shipper: Sagamore Coal Company.

Location of Mine: Big Chief mine on Indian Creek Valley Railroad Indian Head, Pa.

Shipments to be at the rate of 2 cars per day for 10 consecutive working days.

2. That all rules, regulations, and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copies of this order be served upon the carriers hereinbefore described, and that notice of this order be given to the General Public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission Division 5:

George B. McGinty, Secretary. (Seal.)

[fol. 500] Amendment No. 1 to Service Order No. 32

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington D. C. on the 8th day of January, A. D. 1923.

The Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given and good cause appearing therefor, it is ordered and directed:

1. That effective, January 10, 1923, the Pennsylvania Railroad Company place, furnish, and assign hopper-bottom cars suitable for the loading and transportation of bituminous coal to Arror No. 5 Mine of the Arrow Coal Mining Company located on the line of said railroad at Reitz, Pa., at the rate of 5 cars per day for a period of 5 consecutive working days when consigned to the Government Fuel yards, Washington, D. C. in preference and priority to any other placement or use of such hopper-bottom cars; provided, that the hopper-bottom cars so placed, furnished and assigned shall not be counted against the distributive share alloted to the mine herein named; and Provided further, that cars so placed furnished and assigned shall, after loading be transported only for the special purpose herein designated, and shall not be subject to reconsignment or diversion except by and with the approval of the commission.

2. That all rules, regulations and practices of said common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

[fol. 501] 3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 502] Service Order No. 33

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 6th day of January, A. D. 1923.

It appearing, in the opinion of the Commission that an emergency which requires immediate action exists upon the lines of the West Virginia Northern Railroad Company, Indian Creek Valley Railroad Company and the Baltimore & Ohio Railroad Company, upon which the West Virginia Northern Railroad and Indian Creek Valley Railway are dependent for car supply, properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the commission the issuance of directions as hereinafter given. It is ordered and directed, that effective January 9, 1923, and until the further order of the commission, or until the directions hereby given are fully performed;

1. That in the supply of cars to mines upon the lines of the West Virginia Northern Railroad Company and Indian Creek Valley Railway Company, which carriers are dependent upon the Baltimore & Ohio Railroad for car supply, the latter company is hereby authorized and directed to place, furnish, and assign the coal mines herein named with open top cars suitable for the loading and transportation of coal in the quantities and at the rate specified when consigned to the Supply Officer of the United [fol. 503] States Navy and covered by government bills of lading, in preference and priority to any other placement

or use of such open top cars; provided, that the open top cars so placed, furnished, or assigned, shall be counted against the distributive share allotted to the mines herein named:

Shipper: Lucky Jack Mining Company.

Name and location of mine: Lucky Jack Mine on West Virginia Northern Railroad, Snyder, W. Va. Shipment to be at the rate of 3 cars per day for 9 consecutive working days.

Shipper: Bonafield Coal Company.

Name and location of mine: Lambert Mine on West Virginia Northern Railroad, Tunnelton, W. Va. Shipment to be at the rate of 10 cars per day for 9 consecutive working days.

Shipper: Victory Coal Company.

Name and location of mine: Victory Mine on West Virginia Northern Railroad, Tunnelton, W. Va. Shipments to be at the rate of 2 cars per day for 9 consecutive working days.

Shipper: H. D. W. Coal Company.

Name and location of mine: Freeport Mine on West Virginia Northern Railroad, Tunnelton, W. Va. Shipments to be at the rate of 4 cars per day for 9 consecutive working days.

[fol. 504] Shipper: Borgman Coal Company.

Name and location of mine: Borgman Mines No. 1 and 2 on West Virginia Northern Railroad, Tunnelton, W. Va. Shipments to be at the rate of 8 cars per day for 9 consecutive working days.

Shipper: Borgman Coal Company.

Name and location of mine: Borgman Mine No. 3 on West Virginia Northern Railroad, Tunnelton, W. Va. Shipments to be at the rate of 3 cars per day for 9 consecutive working days.

Shipper: Howard Coal Company.

Name and location of mine: Kimmel Mine on Indian Creek Valley Railway, Davistown, W. Va. Shipments to be at the rate of 5 cars per day for 27 consecutive working days.

2. That all rules, regulations, and practices of said common carrier by railroad with respect to car service as that

term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copies of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

George B. McGinty, Secretary. (Seal.)

[fol. 505] Service Order No. 34

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 6th day of January, A. D. 1923.

It appearing. In the opinion of the commission that an emergency which requires immediate action exists upon the line of the Pennsylvania Railroad Company, because of the inability of said railroad properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the commission the issuance of directions as hereinafter given. It is ordered and directed, that effective January 9, 1923, and until the further order of the commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the line of the Pennsylvania Railroad Company said carrier shall place, furnish, and assign open top cars suitable for the lading and transportation of coal at the Ann Mine of the Oakville Coal & Coke Company, located at Latrobe, Pa., at the rate of 8 cars per day for 15 consecutive working days, when consigned to the Quartermaster of the United States Army and covered by government bills of lading, in preference and priority to any other placement or use of such open top cars: Provided, that the open top cars so placed, furnished, and assigned shall be counted against the distributive share allotted to the mine hereinbefore named.

[fol. 506] 2. That all rules, regulations and practices of said common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 507] Service Order No. 35

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 15th day of January, A. D. 1923.

It appearing, In the opinion of the commission that an emergency which requires immediate action exists upon the line of the Norfolk & Western Railway Company, because of the inability of said railway properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the commission the issuance of directions as hereinafter given. It is ordered and directed, that effective January 17, 1923, and until the further order of the commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the line of Norfolk & Western Railway Company said carrier shall place, furnish, and assign hopper-bottom cars suitable for the loading and transportation of bituminous coal at the rate of 8 cars per day for 10 consecutive working days at any one of the several mines named below, when consigned to the United States Navy yard at Portsmouth, Va., in preference and priority to any other placement or use of such hopper-bottom cars; provided, That the hopper bottom cars so placed, furnished, and assigned shall not be counted against the distributive share allotted to the mines at which cars are placed for such loading.

[fol. 508] Baby Mine, Pocahuntas Fuel Co., Pocahontas, Va.
West Mine, " "
Boissevain Mine, " "
Caswell Cree Mine, " "
Cherokee Mine, " North Fork, W. Va.
Elk Ridge Mine, Elk Ridge Coal & Coke Co. " "

Lick-Branch-Shamokin Mine, Pocahunta Fuel Co., Elkhorn, W. Va.
Norfolk-Angle Mine, Pocahunta Fuel Co., Elkhorn, W. Va.
Rolfe Mine, Pocahunta Fuel Co., North Fork, W. Va.
Sagamore No. 1-2, Pocahunta Fuel Co., McComas, W. Va.
Delta Mine, Pocahunta Fuel Co., Elkhorn, W. Va.
Pocahontas No. 6-7-8, Pocahunta Fuel Co., Jenkinjones, W. Va.
Booth-Bowen Mine, Booth-Bowen Coal & Coke Co., Simmons, W. Va.
Pulaski Mine, Pocahontas Fuel Co., Vivian, W. Va.
Roanoke Mine, Roanoke Coal & Coke Co., North Fork, W. Va.

2. That all rules, regulations and practices of said common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

"George B. McGinty, Secretary. (Seal.)

[fol. 509] Service Order No. 36

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 15th day of January, A. D. 1923.

It appearing in the opinion of the commission that an emergency which requires immediate action exists upon the lines of the common carriers by railroad subject to the Interstate Commerce Act hereinafter named, because of inability of said common carriers properly and completely to serve the public in the transportation of bituminous coal, and the Federal Fuel Distributor having recommended to the commission the issuance of directions as hereinafter given. It is ordered and directed, That effective January 18, 1923, and until the further order of the commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the lines of the common carrier by railroad hereinafter named, each such common carrier is hereby authorized and directed to place, furnish, and assign the coal mines herein named with hopper-bottom cars suitable for the loading and transportation of coal in the quantities and at the rate specified, when consigned to the Government Fuel Yards, Washington, D. C. in preference and priority to any other placement of use of such hopper-bottom cars; provided that the hopper-
[fol. 510] bottom cars so placed, furnished and assigned shall be counted against the distributive share allotted to the mines herein named and shall, after loading, be transported only for the special purpose herein designated, and shall not be subject to reconsignment or diversion except by and with the approval of the commission.

Carrier: Pennsylvania Railroad Company.
Shipper: Emerson & Morgan Coal Mining Corporation.
Name and location of mine: Hagevo Mine, Hagevo, Pa.
Carrier: Pennsylvania Railroad Company.
Shipper: C. A. Hughes & Company.
Name and Location of Mine: Hughes No. 2 Mine, Cassadra, Pa. Shipment to be at the rate of 4 cars per day for 10 consecutive working day- for each of such mines.
Carrier: Pennsylvania Railroad Company.
Shipper: Pennsylvania Coal and Coak- Corporation.
Name and location of mine: Pennsylvania Mine No. 1, Portage, Pa.
Carrier: Pennsylvania Railroad Company.
Shipper: Commercial Coal Mining Company.
Name and location of mine: Commercial Mine No. 5 Twin Rocks, Pa.
Carrier: Johnston & Stoney Creek Railroad Company and Baltimore & Ohio Railroad Company.
[fol. 511] Shipper: Moxham Coal Company.
Name and location of mine: Theremal Mine No. 4 Johnstown, Pa.
Shipments to be made at the rate of 2 cars per day for 10 consecutive working days for each of such mines.
Carrier: Pennsylvania Railroad Company.
Shipper: Pennsylvania Coal & Coke Corporation.
Name and location of mine: Pennsylvania Mine No. 15, Beaverdale, Pa.

Carrier: The Baltimore & Ohio Railroad Company?
Shipper: Helen Coal Mining Company?
Name and location of mine: Helen Mine, Summerfield, Pa.
Shipments to be at the rate of car per day for 10 consecutive working days for each — such mine-.

2. That all rules, regulations, and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby name.

3. That copies of this order be served upon the carriers, hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 512] Service Order No. 38

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 9th day of February, A. D. 1923.

Present: Mark W. Potter, Frederick I. Cox, Commissioners:

It appearing, In the opinion of the commission that an emergency which requires immediate action exists upon the line of the Southern Railway Company, because of the inability of said railway properly and completely to serve the public in the transportation of bituminous coal, it is ordered and directed, that effective February 12, 1923, and until the further order of the commission, or until the directions hereby given are fully performed.

1. That in the supply of cars to mines upon the line of the Southern Railway Company said carrier shall place, furnish, and assign open top cars suitable for the loading and transportation of coal at the mine of the Montevallo Mining Company located at Aldrich, Ala., at the rate of 15 cars per working day, until March 5, 1923, provided that not more than 20 per cent of the amount to be shipped on any day is to be shipped for *con*-consignees who will sell or use for other than domestic purposes and the balance to be

shipped for consignees who will sell or use for domestic purposes only, in preference and priority to any other [fol. 513] placement or use of such open top cars; provided, that the open top cars so placed, furnished, and assigned shall not be counted against the distributive share allotted to the mine hereinbefore named.

2. That all rules, regulations and practices of said common cerrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 514] Amendment No. 1 to Service Order No. 36

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 26th day of February, A. D. 1923.

It appearing, that the emergency which caused the commission on the 9th day of February, 1923, to make and enter its Service Order No. 38, has been measurably relieved.

It is ordered, That said Service Order No. 38, be and the same is hereby vacated, and set aside effective at midnight February 26th, 1923.

It is further ordered That copy of this order be served upon the carrier upon which Service Order No. 38 was served and that notice thereof be given to the general public by depositing a copy of this order in the office of the Secretary of this Commission.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 515] Service Order No. 39

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 5th day of March, A. D. 1923.

It appearing, That the vessel Maumee containing coal for the Springfield Gas Light Company of Springfield, Mass. is now and has been since February 27, 1923, in the harbor at New Haven, Conn., awaiting its turn for placement at the Belle Dock of the New York, New Haven & Hartford Railroad Company for unloading:

And it *is* further appearing, that there were 23 other vessels in the said harbo*n* on said date which arrived there at prior to the vessel*l* Maumee;

And it further appearing, That because of the practice of the New York, New Haven & Hartford Railroad Company in placing vessels at Belle Dock in the order of their arrival, it will take from two or perhaps three weeks before said vessel Maumee can be docked:

And it further appearing: That unless the said vessel Maumee is docked out of its turn the stock of coal of the Springfield Gas Light Company will have been entirely exhausted.

And it further appearing; That the public interest will be best served and the emergency best be met by a prompt placement of said vessel Maumee at said dock for unloading, and by the prompt placement of cars for the transportation of said coal to its destination:

[fol. 516] And it further appearing, that the Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given, it is ordered and directed; effective forthwith:

1. That the New York, New Haven & Hartford Railroad Company permit the docking of said vessel Maumee out of its turn, and that said carrier give preference and priority in the placement of cars at said dock for the transportation of the coal consigned to the Springfield Gas Light Company, Springfield, Mass.

2. That all rules, regulations and practices of said Common carrier by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copies of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof

in the office of the secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 517] I also desire to introduce Exhibit "K" consisting of several sheets.

It was understood that counsel could refer to any part of these exhibits as desired.

Exhibit "K" is as follows:

"EXHIBIT K"

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Notice to Carriers and shippers dated March 2, 1920.

Notice to Carriers and shippers dated April 15, 1920.

Notice to Carriers by Railroad dated August 15, 1922.

Service Order No. 24, entered August 30, 1922,

Amendment to Service Order Order No. 24, entered September 19, 1922,

Amendment to Service Order No. 24, entered December 8, 1922.

Service Order No. 29, entered December 2, 1922, and Amendment to Service Order No. 29 entered December 11, 1922.

The originals of which are now on file and of record in the office of this commission.

[fol. 518] In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 30th day of March, A. D. 1925.

(Signed) George B. McGinty, Secretary of the Interstate Commerce Comm. (Seal.)

[fol. 519] Interstate Commerce Commission, Washington

March 2, 1920.

Notice to carriers and shippers:

The supply of cars available for the transportation of coal is insufficient to meet the demand. Unusual movements

incident upon the strike of coal miners has brought about an abnormal location of cars. It is desirable that the proper relocation of cars shall be brought about as rapidly and with as little confusion as is possible. Critical situations still exist in which fuel for essential industries and purposes must be provided. The railroads and the coal operators have all been working under the uniform mine rating and car distribution rules established by the Railroad Administration and those rules seem to be generally satisfactory and to meet with general approval.

To the end that conflicting and contradictory rules on different roads and in different fields may be avoided in the unusual conditions which now exist in the industries and on the roads, the Commission recommends that until experience and careful study demonstrate that other rules will be more effective and beneficial and especially during the remainder of the early spring the uniform rules as contained in the railroad Administration's car Service Section Circuit CS-31 (Revised) be continued in effect.

George B. McGinty, Secretary.

[fol. 520] Interstate Commerce Commission, Washington

April 15, 1920.

Notice to carriers and shippers:

The Supply of cars available for the transportation of coal continues insufficient to meet the demand. In view of the cessation of government control of Coal production and distribution, effective April 1, 1920, and in order that railroads full requirements may be reasonably met without the necessity of carriers resorting to confiscation of commercial coal, it becomes necessary to amend our notice to carriers and shippers dated March 2, 1920, and our recommendation therein to read as follows:

"The commission recommends that until experience and careful study demonstrate that other rules will be more effective and beneficial, the uniform rules as contained in the Railroad Administration's car Service Section Circular CS-31 (Revised) be continued in effect, except that rule 8 as contained in said circular should be amended to read:

'8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce

Commission in RR Com. of Ohio et al. V. H. V. Ry. Co., 12 Icc 398, and Traer v. Chicago & Alton Railroad Co., et al. [fol. 521] 13, I. C. C. 451, will be designated as "Assigned" cars. All other cars will be designated as "Unassigned" cars.' "

The commission is of the opinion that an emergency exists requiring immediate action, and in exercise of the authority conferred by paragraph (15) of Section 1 of the Interstate Commerce Act, as amended by Section 402 of the transportation act, 1920, hereby suspends the operation of the existing rule 8 and directs the observance by all carriers by railroad subject to the Interstate Commerce Act of Rule 8 modified as above, effective April 12, 1920, and until the further direction or order of the commission.

By the Commission:

George B. McGinty, Secretary.

[fol. 522] Interstate Commerce Commission, Washington

August 15, 1922.

Notice to carriers by railroad:

Attention is directed to the following action of Division 5, of the Commission, taken to-day:

Voted, That the commission considers that the application of the so-called "Railroad assigned car rule" as carried in paragraph 8 of Supplement 1 to car Service Circular No. 31, of the American Railway Association, is inconsistent with the plan of priorities prescribed in Service Order No. 23 as amended of the Commission as necessary to meet a National emergency, and that rule should not be invoiked by railroad carriers subject to the provisions *fo* that Service Order as against the priorities therein required, during the continuance of the order and emergency declared by the Commission. Carriers must meet their needs for fu*le* in some way which is consistent with the service Order and not in conflict therewith.

The whole subject of the propriety of the rule mentioned is before the Commission in a formal proceeding, and this announcement is not to be taken as prejudicing or prejudging the decision to be made in that case, in which the record has not yet been completed.

George B. McGinty, Secretary.

[fol. 523] Service Order No. 24

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 30th day of August, A. D. 1922.

It appearing, In the opinion of the Commission that an emergency which requires immediate action exists upon the lines of each and all the common carriers by railroad subject to the Interstate Commerce Act, West of the Mississippi River, and because of the inability of said common carriers properly and completely to serve the public in the transportation of essential commodities. It is ordered and directed:

1. That such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities: Goods for human consumption, feed for live stock, Live stock, per-shable products and fuel.

2. That to the extent any such common carrier by railroad is unable, under the existing interchange and car Service rules to return cars to its connections promptly, it shall give preference and priority in the movement, exchange, interchange and return of empty cars intended to be used for the transportation of the commodities specially [fol. 524] designated in paragraph number 1 hereof.

3. That all rules, regulations and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

4. That this order shall be effective from and after September 1, 1922, and shall remain in force until the further order of the Commission.

5. That copies of this order be served upon the carriers hereinbefore described and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 525] Amendment No. 1 to Service Order No. 24

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 19th day of September, A. D. 1922.

It is ordered that paragraph 1 of said Service Order No. 24, which reads:

"1. That each such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities; Food for Human consumption, feed for live stock, live stock, perishable products, and fuel."

be, and it is hereby amended effective at midnight September 20th, 1922, so as to read:

"1. That each such common carrier by railroad, to the extent that it is currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway shall give preference and priority to the movement of each of the following commodities; Food for human consumption, feed for live stock, live stock, perishable products, mine supplies, medicines, fertilizers, seeds, news print paper coal, coke and other fuel and petroleum and its products in tank cars."

It is further ordered, that copies of this order be served [fol. 526] upon the carriers upon whom Service Order No. 24 was served and that notice of this order be given to the general public by depositing a copy hereof in the office of the secretary of the commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 527] Amendment No. 2 to Service Order No. 24

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 8th day of December, A. D. 1922.

It appearing, that the emergency which caused the commission on the 30th day of August 1922, to make and enter its service Order No. 24, and the amendment thereto

made and entered on the 18th day of September, 1922, had been measurably relieved.

It is ordered That said Service Order No. 24, as amended be, and the same is hereby, vacated and set aside effective at midnight December 11, 1922.

It is further ordered, That copies of this order be served upon the carriers upon which Service Order No. 24, was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the Secretary of this Commission.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 528] Service Order No. 29

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 2nd day of December, A. D. 1922.

It appearing, in the opinion of the Commission that an emergency which requires immediate action exists upon the line of the Missouri Pacific Railroad Company because of the inability of said railroad properly and completely to serve the public in the transportation of anthracite coal, and the Federal Fuel Distributor having recommended to the Commission the issuance of the directions as hereinafter given. It is ordered and directed:

1. That effective December 4, 1922, the Missouri Pacific Railroad Company, place, furnish, and assign open top cars suitable for the loading and transportation of anthracite coal to mines in the so-called Spadra District on the line of said railroad at the rate of 40 cars per day for a period of 10 consecutive days, provided, that the open top cars so placed, furnished, and assigned shall be counted against the distributive share allot-ed to the mines in said district.

2. That all rules, regulations and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far [fol. 529] as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be

given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 530] Amendment No. 1 to Service Order No. 29

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C. on the 11th day of December, A. D. 1922.

The Federal Fuel Distributor having recommended to the Commission the issuance of directions as hereinafter given and good cause appearing therefor, it is ordered and directed:

1. That effective December 12, 1922, the Missouri Pacific Railroad Company place, furnish, and assign open top cars suitable for the loading and transportation of anthracite coal to the Bernice Mines on the line of said railroad at the rate of 10 cars per day for a period of 5 consecutive days; provided that the open top cars so placed, furnished and assigned shall be counted against the distributive shares allot-ed to the mines in said district.

2. That all rules, regulations and practices of said common carriers by railroad with respect to car service as that term is defined in said act are hereby suspended so far as they conflict with the directions hereby made.

3. That copy of this order be served upon the carrier hereinbefore described, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission, at Washington, D. C.

By the Commission, Division 5.

George B. McGinty, Secretary. (Seal.)

[fol. 531] W. F. TYLER, a witness for the defendant, being sworn, testified as follows:

Mr Pryor:

Q. State your name?
A. W. F. Tyler.
Q. You are the father of Floyd Tyler that just testified?
A. Yes, sir.
Q. Where do you live?
A. Excelsior.
Q. How long have you lived there?
A. Since September 12, 1912, except just short intervals I would be off.
A. Are you in the employ of the Midland Valley Railroad Co.?
A. Yes, sir.
Q. How long have you been connected with that company?
A. Since September 12, 1912.
Q. What position have you held?
A. Yard master, Train master and Coal agent.
Q. What were your duties as coal agent?
A. As coal Agent my duties were to distribute empty coal cars to the mines and move the loads from the mine, or see that they were properly moved from the mines to the connection.
Q. Were you connected with the Midland Valley Railroad in that capacity during the year 1922?
A. Yes, sir.
[fol. 532] Q. Were you absent during any portion of the time from Excelsior?
A. From March 21, or 22nd, I think the 21st, I was loaned to the Osage Railroad Company.
Q. Loaned by whom?
A. Midland Valley.
Q. They permitted you to go there?
A. Yes, sir.
Q. Is that road connected with the Midland Valley?
A. It is not my understanding that it is.
Q. An independent line. Where is that?

A. It runs from Fair Acre to Shidlier; It did at that time during my administration, but it was extended to Lima Oklahoma about 18 miles.

Q. It serves an oil territory there?

A. Yes, sir.

Q. Where does it connect with the Midland Valley?

A. Fair Acre.

Q. Where is that?

A. Twenty-three or four miles West of Pawhuska.

Q. Did you still retain your position as coal agent at Excelsior during that period?

A. Coal Agent and local agent.

[fol. 533] Q. How did you conduct the business during your absence?

A. When I was loaned to the Osage Railroad Company our coal business was very low. We had not coal business to speak of, and it was handled over my name during my absence by my son.

Q. Reports were made over your name and the business conducted in your name as agent there?

A. Yes, sir.

Q. Are you acquainted with what is known as the Fax Coal Company's mine located near Montreal?

A. I did not know the Fax Coal Company as a operating mine when I lived there.

Q. Are you acquainted with the location of the Jackson Spur?

A. Yes, sir.

Q. What time did you leave to go — the Osage Railroad?

A. The morning of the 21st or 22nd, of March 1922.

Q. When did you finally return to Excelsior?

A. Permanently?

Q. Yes.

A. On February 19, 1924.

Q. During the time, from the time you left in March until Mr. Powers took charge, did you know that Mr. Powers when there as agent?

A. Yes, sir.

Q. When?

A. In September, 1922.

[fol. 534] Q. During that period from March to September, how many trips did you make to Excelsior?

A. I call to mind two trips.

Q. Two trips during that time?

A. Yes, sir.

Q. You say as coal agent you had in your charge the matter of distribution of coal cars?

A. Yes, sir.

Q. How were the coal cars distributed during that time?

A. During the time I was coal agent there?

Q. Yes.

A. During the year 1922, from January 12, until March, as I remember the mine was loading their normal output and the cars were distributed on a pro rate basis; that is if they had sufficient number of cars to supply all mines they would be given one hundred per cent supply; but if the mines ordered one hundred cars and we only ahd 80 cars we would divided these between the mines and idle enough mines necessary to give the other mine a full day's work and idle some of the other-, then if the other mines wanted cars the next day we would idle those that worked to-day and work those that were idle, worked them to-morrow.

Q. Are you familiar with rule promulgated and established with the Interstate Commerce Commission in regard to the distribution of coal cars?

[fol. 535] A. Yes, CS-31.

Q. Did you follow that rule?

A. Yes, sir.

Q. Could you tell the jury whether or not it was formed in your absence or not?

Plaintiff objects.

Question withdrawn.

Q. Under the rule the number of cars too which a mine was entitled was governed by the capacity of the mine?

A. Yes, its actual ability to produce and load coal on the cars.

Q. Did you ever have any conversation with Mr. Caudle with reference to furnishing cars to the Fax Coal Company's mine?

A. No, sir.

Q. And the rule does not require an affidavit to be made by the operator of a mine?

A. All I know on each month's business the operator is supposed to make a monthly operating report showing the number of tons of coal produced and loaded on the cars. And the number of hours the men actually worked, and the number of hours the men actually lost by having no cars, the number of hours the men actually lost from other causes.

Q. After you left Excelsior in March when was your successor appointed as agent there?

[fol. 536] A. I remember it was in September, 1920.

Q. Who was the agent and what was his name?

A. R. G. Powers.

Q. During the period from March until the time you left until Mr. Powers came, who continued to act as agent and who was agent there at that time?

A. I was agent and the office was handled by my son and my daughter.

Q. Your son and your daughter?

A. My son and my wife.

Q. Is your wife a telegraph operator?

A. Yes, sir.

Q. And the business was conducted still in your name as Agent?

A. Yes, sir.

Cross-examination.

Mr. Charley Evans:

Q. You say you left Excelsior in March 1922?

A. Yes, sir.

Q. And from March 22nd, until some time in—how long did you work for the company; were you working for them or the other company?

[fol. 537] A. The other company, I worked for them until January 1st, 1924.

Q. You worked for what company was that?

A. The Osage Railroad Company.

Q. At Shidler, Oklahoma?

A. Yes, sir.

Q. How far is Shidler from Excelsior, Arkansas?

A. About 227 miles.

Q. And the Osage Railroad was not connected with the Midland Valley? It was a separate and independent system?

A. So far as I know.

Q. And from March 22, and until September 23rd, you made t-o visits to Excelsior, Arkansas?

A. That I remember, two visits, yes, sir.

Q. Your family was at Excelsior, your wife and son?

A. Yes, sir.

Q. During that time?

A. Yes, sir.

Q. You continued to work for the Osage Railroad Company during the balance of 1922 and all of the year 1923?

A. I previously stated that I was loaned to the Osage Railroad Company. Our coal business was very slack and [fol. 538] they — a very heavy blockade up there and had not been successful in raising it and I am presumed to understand that when they sent for me to raise the blockade and I was loaned for 30 days, and at the end of 30 days and they had no one else there suited for the position and asked me to stay there another 30 days. Nothing to do so I stayed the additional 30 days, and at the expiration of that 30 days they did not have any one for the place and you might say I just drifted on.

Q. It was pretty hard to find a man to satisfy there during that time?

A. It takes an all around man.

Q. You say that before January and February, 1922, when the mines were working normally and putting out their normal output you would have shortages and would not have enough coal cars to furnish the mines and that you would apply the order of the Interstate Commerce Commission CS-31 is that correct?

A. CS-31 applied at all times. We worked under that at all times, when we had a shortage * * *

Q. You said a while ago that in January and February the mines worked normally you would have shortages of equipment that you would pro rate them, is that correct?

[fol. 539] A. Yes, sir.

Q. When the mines were working normally it was a common thing for you to be short wasn't it?

A. Yes, sir.

Q. And was not able to supply the demand, of course during the time the strike was on you had ample facilities and there were very few mines working.

A. Very few.

Q. They were working under Utility Contracts?

A. I cannot say I did not have charge of the mines at that time. The strike was on. I call to mind, April 1st, just about 10 days after I left.

Q. You do not know about the condition on the line during the time you were away.

A. I was not there; but I would know this: I knew they would have a surplus of coal cars because it began to show up before I left there.

Mr. Pryor:

Q. You were asked about it requiring a man of some experience to raise a blockade that existed on the Osage Railroad?

A. Yes, sir.

Q. What experience have you had in railroad work?

A. I have had about forty years.

[fol. 540] Q. In what capacity?

A. I have had experience as Yard clerk; I have had experience as switchman; I have had experience as a brakeman; I have had experience as a conductor and I have had experience as a track man and experience as a dispatcher; and had experience as an agent, and experience as an operator.

Mr. Evans:

Q. And as a coal agent?

A. And as a coal agent.

Mr. Pryor:

Q. During the period you say you were loaned up there; the jury might not understand that, that you were loaned to the Osage railroad? Did you draw a salary from the Osage Railroad during the period from March until September?

A. Yes, sir.

Q. They paid you a salary?

A. Yes, sir.

Q. You continued to act in that capacity during that period?

A. Yes, sir.

[fol. 541] R. C. Powers, A witness for the defendant, being sworn testified as follows:

Mr. Pryor:

Q. State your name?

A. R. G. Powers.

Q. You live at Muskogee?

A. Yes, sir.

Q. Are you connected, in any way, with the Midland Valley Railroad Company?

A. Yes, sir.

Q. In what capacity?

A. Traveling auditor.

Q. What are your duties as traveling auditor?

A. Transfer agents at different stations, and checking accounts of the agents, and looking after the general condition of the station.

Q. Did you also hold an official position with the Midland Valley Railroad Company during the year 1923?

A. Yes, sir, I was coal agent at Excelsior from September 19, 1922, on until the latter part of 1923.

Q. What were your duties there? you say you were coal agent?

A. Yes, sir.

Q. What were the duties of a coal agent at Excelsior?

A. I had charge of the distribution of cars to the coal mines and moving empties into the mines and handling loads from the mines to the terminals.

[fol. 542] Q. Are you acquainted with the plaintiffs in this case?

A. Yes, sir, I met them.

Q. Are you acquainted with what is known as the Fax Coal company's mine near Montreal?

A. Yes, sir.

Q. Were you acquainted with that mine at the time you worked at Excelsior in 1922?

A. Yes, sir.

Q. Mine located on the Midland Valley to whom did they apply for cars during that time?

A. They applied to the agent at the nearest station to which the mine was, and the application was transmitted by that agent to the coal agent.

Q. How long did you remain coal agent?

A. From September 19, 1922, until October 5, 1923.

Q. I will ask you if during that time you distributed the available coal cars between the mines.

A. They were distributed according to what is known as CS-31 Circular Instruction given out by the American Railway Association during the war and continued in effect by the station under the Interstate Commerce Commission, as I understand it, and distributed the cars according to the rating of the mine; the last rating of the mine; that is in the car shortage we would give the mines that ordered cars eight hours work and the next day we would shut them [fol. 543] down and give somebody else eight hours' work. That is the rule that is in effect now and was at that time.

Q. You say that was a rule adopted by the American Railway administration during the period of the war?

A. Yes, sir.

Q. And was continued in effect by the Interstate Commerce Commission afterwards?

A. Yes, sir.

Q. Explain the rule more in detail, I might ask you to read the rule but it take- so much time.

A. The rule is this: The rule was promulgated to start with by the railroad Administration to facilitate the handling of coal cars to the mines. There were many complaints of coal operators as to the different methods of different railroad- of handling the distribution of coal cars, and this was made to apply to all railroads so it would be uniform. It was the same on one railroad as on another. The method was to give the mines eight hours work, eight hours straight work. Some railroads at that time, were distributing cars, giving one mine five cars, another mine two, another mine ten and then hold up the cars they had for this mine and consequently let this mine work one or two hours or three hours or a half day; and this rule was got out so that the time would have eight full hours work and maybe the whole neighborhood would be shut down a whole day and all

would work eight hours the next day, and this neighborhood would work the full eight hours and this would be idle.

[fol. 544] Q. How was the rating of these mines arrived at?

A. It was arrived at by the rule and regulations requiring mines, operators of mines, to furnish an affidavit showing the tons of coal produced and loaded in the cars during the past 30 days, the number of hours lost for want of cars, the number of hours lost from other causes, the number of hours actually worked, that is based on the working month of 208 hours. This affidavit showing the coal produced at the mines and the number load in the cars and the coal that was consumed and the amount of coal hauled away from the mine in wagons, included all the coal that was produced at that mine and just the hours work and of course, that was the basis of their rating for the next month. This is, their ability to produce and load coal on the cars.

Q. And the rule required them to make an affidavit to that?

A. Yes, sir.

Q. How were the orders for cars requested to be furnished to the agent?

A. They required the operator to furnish the report to the agent showing the business they were doing and this report was supposed to be furnished to the agent at 5 P. M. each working day and that showed all the information necessary for a proper operation of their mine and just the [fol. 545] number of cars they had received during the past 24 hours, and the number of cars and tons loaded during the past 24 hours, and the number of cars required for the next 24 hours.

Q. Was there a permanent record kept of the number of cars furnished each mine and the capacity of their mine?

A. Yes, sir.

Q. And the number ordered?

A. Yes, sir.

Q. Have you that record or a copy of that record made by you?

A. Yes, sir.

Q. Have you got a tabulation order? I do not want to go through the whole records.

—. —.

Mr. Evans:

Q. Is this statement made from the original records? Where are the original records?

A. This is the Original Records.

Mr. Pryor:

Q. That was compared and tabulated from the original record and is the original record and this was done for the purpose of saving time? To put the entire record in here we would need a dray wagon to carry them.

Mr. Evans: We submit that we have no way of investigating the original records and we have had not opportunity to verify that and it would be a violation of the rule of [fol. 546] evidence to permit them to Be put in; and we object to what he says is a compliation that he made from the records here in court. If they want to put the original records in alright.

Mr. Pryor:

Q. Did you make this from the permanent records there at Excelsior?

A. Yes, sir.

Q. You made these figures yourself?

A. I made these figures from these records.

Q. You made the records and you made this compilation of these permanent records?

A. Yes, sir.

Q. And a large part of these records you made yourself?

A. Yes, sir.

Q. You made the original and the copies?

A. Yes, sir.

Mr. Pryor: We submit from the showing made that we have a right to introduce this in evidence. It was introduced and Mr. Powers testified from it for the last trial as I recollect it.

The Court: The Court will sustain said objection of counsel for plaintiff and will allow the witness to testify to anything he knows and refresh his memory from the records if he wants to from that memorandum.

Plaintiff saved an exception.

[fol. 547] Mr. Pryor:

Q. You stated you were acquainted with the Plaintiffs in this case?

A. Yes, sir.

Q. And you are acquainted with what is known as the Fax Coal Company's mine?

A. Yes, sir.

Q. I will ask you from the time you took charge of the station as coal agent was there a shortage of cars?

A. Yes, sir.

Q. Why was there a shortage of cars, if you know?

A. The mines were shut down for several months and when they opened up everybody wanted to load coal, and everybody wanted coal cars, and for that reason the car supply was soon exhausted.

Q. Do you know whether or not the Midland Valley Railroad Company was supplied with sufficient equipment, as far as coal cars was concerned, to take care of the coal business on its line?

A. Yes, sir. We had plenty of equipment to take care of our coal business, if we could have gotten the cars back to load them.

Q. How is that?

A. The equalization of cars from connection when loaded.

Q. You state there was an unprecedent of coal cars at that time.

[fol. 548] A. Yes, sir, there was.

Q. Do you know how the equipment as far as coal cars are concerned owned by the Midland Valley Railroad compared to any other railroad serving this territory?

A. Yes, sir.

Q. How did it compare with that of other railroads in this territory?

A. We had a little more coal cars equipment than any other railroad operating in that territory at that time.

Q. What was the trouble, as far as the Midland Valley Railroad was concerned with reference to having a sufficient car supply to meet the demand?

A. It was the equalization by other railroads.

Q. What do you mean by that?

A. Equalization was when we delivered a loaded car to our connection we asked our connection to deliver us an

empty back to equalize it, that is, to give us an empty for every load which they did not do.

Q. What railroads did the Midland Valley connect with at that time?

A. We connected with the Rock Island, Kansas City Southern, Missouri Pacific, Frisco, Missouri Kansas and Texas, the K. O. & G. and Sante Fe.

[fol. 549] Q. When the coal is loaded does it go to the final destination in the car in which it is loaded?

A. Yes, sir.

Q. Was there in effect, at that time, any rule or method by which the company could obtain their equalization you mention?

A. There was no mandatory rule, but I think there was a rule promulgated by the American Railway Association and I think it was recommended by the Interstate Commerce Commission, but it was not mandatory and there was no way to enforce it.

Q. You state that you were acquainted with the Plaintiffs in this case?

A. Yes, sir.

Q. And that you were acquainted with the Fax Coal Company's mine?

A. Yes, sir.

Q. Do you know how many cars was furnished them during the year 1922?

A. Yes, sir.

Mr. Evans: If he raises the question again as to whether the witness can testify to the minutes from what he says is a permanent record without introducing the record we object:

[fol. 550] Mr. Pryor: I asked him if he knew how many cars there was furnished the Fax Coal Company during 1922, and he says he does.

Witness: I would not know outside of the record.

Q. Have you a memorandum made from the permanent record which you made?

A. Yes, sir.

Q. And which was made in the usual course of business.

A. Yes, sir.

Q. And you have their just an excerpt from those records?

A. Yes, sir .

Q. A Memorandum.

A. Yes, sir.

Q. I will ask the question now, referring to that memorandum, can you tell how many cars was furnished to the Fax Coal Company during the year 1922?

The same objection by counsel for plaintiffs was made.

Mr. Pryor: We insist that we have a right to show this. The same question was gone over at the last trial of this case and there was no objection made to this character of testimony. It is introduced in the trial of every case involving a car shortage wherever there is a suit filed for the failure to furnish cars.

[fol. 551] The Court: He can use that to refresh his memory, from the memorandum. We will let him give the testimony. What was done at the last trial has nothing to do with this.

Plaintiff saved an exception.

Mr. Pryor:

Q. State how many cars were furnished the Fax Coal Company? Do you know how many cars was loaded by them in 1922?

A. For the whole year?

Q. Yes, sir?

A. 45 cars.

Q. How many?

A. 45 cars.

Q. How many of those cars were loaded before June 22, 1922?

A. 18.

Q. Then from January 1st, up to June 22, 1922, they loaded 18 cars?

A. Yes, sir.

Q. How many did they load after that, from June 22nd, up to January 1st, 1923?

A. 27.

Q. On the basis of the working hours of the mine how did the number of cars furnished to the plaintiffs compare with the number of cars furnished other mines?

[fol. 552] A. For what period?

Q. From June 22nd, 1922, to January 1st, 1923 covering that period?

A. They got a pro rate amount of cars during the months of June, July, August and September.

Q. They got their pro rate number of cars during that time?

A. Yes, sir.

Mr. Evans:

Q. What months?

A. June, July, August and September.

Mr. Pryor:

Q. I hand you what appears to be the coal rating bulletin, Number 5, issued July 21st, 1922, Muskogee Oklahoma on what is called the Jackson Spur?

A. Yes, sir.

Q. Rated How much?

A. One car.

Q. You say the rating is based upon what the operators swear to?

A. Yes, sir.

Q. I hand you what has been identified as Exhibit "H." Which appears to be a coal rating bulletin Number 6, issued October 1st, 1922 (Presenting a paper)?

A. Yes, sir.

[fol. 553] Q. State whether or not the Jackson Spur is on that?

A. No, sir.

Q. Can you explain to the jury why it was left out?

A. Yes, sir.

Q. What was it.

A. At the time the rating was made it was made on the basis of the last operation. At the last operation there was a balance of coal cars more than we knew what to do with and for that reason they put Jackson Spur and several other wagon loading mines on this rating in order to arrive at some kind of equitable distribution at that time; but upon the issuing of this bulletin, October 1, Coal cars were short and all wagon loading mines, as well as the one on Jackson Spur was left off of this bulletin because they did not comply with CS-31.

Q. What character of equipment was supplied under the rule to wagon loading mines after that time?

A. They were supplied box cars.

Q. Did you, at any time, furnish to the plaintiffs, the Fax Coal Company's mine, Box cars?

A. Yes, sir, I did.

Q. Did they refuse to load them?

A. Yes, sir.

Q. Did you have any conversation with the plaintiffs with reference to their refusal to load box cars?

[fol. 554] A. Yes, sir. They were at the station one time, I think.

Q. Was box cars furnished to other wagon loading mines and used by them?

A. Yes, they were.

Q. How many were furnished to other mines; have you got the name of the mines?

A. Yes, sir.

Q. State to the jury how many other wagon loading mines used box cars for the purpose of loading coal during that period?

A. Stafford, Izelle, Scebine, Elder, Henryette, Apex, Acme, Toonery, during October, November and December and January; October 1922 and November and December and January; these mines loaded 609 box cars with coal.

Q. That would be 150 a month?

A. About 150 a month.

Q. These plaintiffs refused to load in box cars at all?

A. Yes, sir.

Q. Do you know Mr. W. C. Caudle here?

A. Yes, sir.

Q. Did you ever have any conversation with him over the telephone or otherwise with reference to furnishing the plaintiffs with cars?

A. Not that I know of, no, sir; not as I remember.

[fol. 555] Q. While you were there didn't you receive orders from him by registered mail for cars?

A. Yes, sir, I did.

Q. Can you identify these papers marked Exhibit "C" as being orders for cars sent by registered mail to you?

A. Yes, sir.

Q. How many cars were ordered in all these orders?

A. Two cars each day.

Q. One hundred ton capacity.

A. Yes, sir.

Q. The mine only had a rating of 50 ton?

A. Yes, sir.

Q. Or one car?

A. One car, they loaded about 30 ton.

Q. In many of these orders gondola cars were ordered, what is a gondola car?

A. It is an open top trap bottom car.

Q. Are those cars ever used for the transportation of coal?

A. Not commercial coal, no sir.

Q. What are they used for?

A. For railroad coal; they load railroad coal in these cars and dump them automatically in coal chutes.

Q. They are known then — what is termed ordinarily as commercial coal cars?

A. Yes, sir.

[fol. 556] Q. Did either of the plaintiffs ever demand cars otherwise from you personally or by telephone during the period you were there?

A. They came there once and inquired about cars; and that was along about the first of October, I think.

Q. State to the jury, if you remember the date?

A. I told them that I could not furnish coal cars under the rule but that we would furnish them all the box cars they could use; that we had plenty of box cars, and they stated that they could not seel their coal in box cars and up to that time had not gotten any reports from them.

Q. When you offered to furnish them box cars did they say anything to you about letting their mine remain idle?

A. They said they could not load box cars.

Q. There was some box cars put in there at one time?

A. Yes, sir.

Q. Do you know when that was?

A. Yes, sir.

Q. When was it? Have you a memorandum that will show that?

A. October 22nd.

Q. How many cars put in there?

A. 3 placed in there October 19th and pulled them on October 22nd, in there four days.

Q. Do you know what was done with those cars.
A. They were taken out and placed to the Davis Mine.
[fol. 557] Q. Where is the Davis Mine located?
A. Near Hartford.
Q. They were loaded at the Davis mine?
A. Yes, sir. All three of them was loaded at the Davis mine.
Q. You have stated that the records show that they were received their pro rate part of the cars in the distribution up to October 1st.
A. Yes, sir.
Q. That is when they files th-se orders closing out wagon loading mines and furnished them box cars?
A. Yes, sir.
Q. You never had any disagreement with th-se plaintiffs in this case.
A. No, sir, I did not.
Q. Or with Mr. Caudle?
A. No, sir.
Q. I will ask you how many times you said they called you?
A. They never called at the office but once.
Q. And that was with reference to the box cars?
A. Yes, sir.

Cross-examination.

Mr. Charley Evans:

Q. With reference to the box cars?
A. Yes, sir, with reference to box cars.
[fol. 558] Q. They tried to get coal cars?
A. Yes, sir.
Q. When did you get to Excelsior?
A. September 19, 1922.
Q. Up to that time you had nothing to do with the making of the records at Excelsior?
A. No, sir.
Q. You knew nothing about the fact?
A. No, sir.
Q. You do not know who made the records?
A. Yes, sir.

Q. You saw them make them?

A. No sir, I did not see them make them. I am familiar with the hand writing of the parties who made them.

Q. Who?

A. W. F. Tyler, Floyd Tyler.

Q. Did you see W. F. Tyler make them?

A. I did not see him but I can tell his hand writing.

Q. W. F. Tyler?

A. W. F. Tyler and Floyd Tyler.

Q. How many of the records did W. F. Tyler make?

A. It was the early part of 1922; the other was made from March until September, by Floyd Tyler.

Q. What were you doing at that time?

A. Traveling auditor.

[fol. 559] Q. You went to Excelsior as what?

A. Coal Agent.

Q. You made the records from then on?

A. Yes, sir.

Q. You have the original records here in court?

A. Yes, sir, the 5 P. M. reports.

Q. You made a memorandum from that and that is what you are basing you- testimony on?

A. Yes, sir.

Q. How many cars did the plaintiffs in this suit order in January, 1922?

A. Six.

Q. How many was furnished?

A. Six.

Q. How many was ordered in February, 1922?

A. None.

Q. How many on the 7th?

A. Five.

Q. How many were furnished?

A. Five.

Q. How many were ordered in April?

A. None.

Q. How many in May?

A. Four.

[fol. 560] Q. How many were furnished?

A. Four.

Q. How many ordered in June?

A. Six.

Q. How many furnished?
A. Six.
Q. How many were requested in July?
A. Four.
Q. How many were furnished?
A. Four.
Q. How many requested in A-gus*ut*?
A. Four.
Q. How many were furnished?
A. Four.
Q. You testify from the record or your personal knowledge?
A. From the record.
Q. That you did not make?
A. Yes, sir.
Q. The reco-d show- in June 1922, how many were furnished?
A. Six.
Q. How many was requested in July and how many was furnished?
A. Four.
Q. How many in August?
A. Four.
[fol. 561] Q. And how many were furnished?
A. Four.
Q. How many furnished in September?
A. Seven.
Q. How many furnished in October?
A. Two.
Q. And in November?
A. None.
Q. In December?
A. None.
Q. You have no personal knowledge of any of the matters except September 19, 1922?
A. Except what the records show.
Q. The records somebody else made?
A. Yes, sir. You understand the record is made by the coal operator, and the original is made by the coal operator and the record made from that. I check the original reports as made by the coal operator made by the plaintiffs in this case to make this data from and that is made from the original report.

Q. And you have them here in Court?

A. Yes, sir.

Q. Up until September 19th, you know nothing about it and you had no personal knowledge of it?

A. Nothing only what I give from the records.

[fol. 562] Q. You have no personal knowledge?

A. No, sir.

Q. Were you ever at the mine of the Fax coal Company?

A. Yes, sir.

Q. When?

A. Several times.

Q. During the time they were operating it?

A. Yes, I went there one time during the time theye were operating it but wasn't in the mine it was on Sunday.

Q. You were there only one time?

A. At the time. I have been there a number of times and saw this spur there but I do not remember being at the mine but one time; walked out there one Sunday morning.

Q. You explained the car shortage of the Midland Valley Railroad company applying CS-31 coal rule for distributing cars, what was the normal output of the mines along the Midland Valley Railroad when they were working according to the rating given them?

A. One hundred to One hundred twenty five cars a day.

Q. When they were working normally?

A. Yes, it would depend a good deal on weather conditions.

Q. How many cars did the Midland Valley own at that time?

A. About eleven hundred cars.

Q. Before the strike you would have trouble, you could not furnish a normal demand?

[fol. 563] A. I do not know anything about that; the records show they had one hundred per cent car supply.

Q. Who did?

A. All the mines had one hundred per cent car supply during January, February and March, 1922.

Q. All had one hundred per cent supply and you had ample facilities during the strike?

A. Yes, sir.

Q. But in a few days after the strike was settled your supply was exhausted?

A. Yes, sir.

Q. You had the contract by which they were requested to return empties for loads?

A. Not that I know of.

Q. You might have gone to the Interstate Commerce Commission and gotten some relief?

A. I think we went to the Interstate Commerce Commission but did not get any relief.

Q. When did you go*t* to them?

A. In the fall of 1922.

Q. Did you hear Mr. Williams testify yesterday evening?

A. Yes, sir.

Q. He stated that they went to the railroad association?

A. Well it might have been; I don't know, just who it was they went to somebody. It was my understanding that the matter was taken to the Interstate Commerce commission.

[fol. 564] Q. Have you got a record of that?

A. No, sir.

Q. Have you a record?

Mr. Pryor: Yes.

Mr. Evans: Your General Manager stated that they went to the Railroad association, Mr. Sawn. Here is a copy of it.

Mr. Evans:

Q. When did you leave Excelsior?

A. October 5, 1923.

Q. You furnished box cars to some mines during the fall and winter of 1922?

A. Yes, sir.

Q. Did all of the mines ask for box cars?

A. Yes, some did.

Q. Some of the mines ask for box cars?

A. Yes, sir. That is after we commenced furnishing box cars they didn't ask for anything else.

Q. These plaintiffs came to you about cars and talked to you about cars and you told them you would give them box cars and they told you that they could not load them *they* they could not see*l* their coal in them?

A. That is correct.

[fol. 565] Q. Was it after that that you set some box cars in there?

A. Yes, sir.

Q. Why did you do that?

A. I thought ma*by*- they might change their minds and load them.

Q. Don't you know you were expecting a law suit at that time?

A. I did not know about that.

Q. Were you not preparing for a law suit when you set those cars in there?

A. No, sir.

Q. You set them in there after they told you they could not sell their coal in them?

A. Yes, sir.

Q. These orders are number five and number six?

A. Yes, sir.

Q. Number six was issued after Number 5?

A. Yes, sir.

Mr. Pryor:

Q. What do you mean by the term one hund*er*- per cent car supply?

A. That they had all the cars they ordered.

Q. I will ask you as far as the record is concerned you have a accurate record of the movement of every car on [fol. 566] the railroad whether they are loaded or empty?

A. Yes, sir.

Q. Foreign roads report to you where your cars are?

A. Yes, sir.

Q. You were asked whether you used any diligence going before the Interstate Commerce Commission, didn't you file an application with the Interstate Commerce Commission? I will ask you if on November 3rd, 1922, if there were not instructions issued to coal operators on the Midland Valley Railroad and others interest- showing that application had been made to the Interstate Commerce Commission, (Presenting a paper) to request foreign roads to return empties for loaded cars you delivered to them?

A. Yes, sir.

Q. I will ask you if the Interstate Commerce Commission, at that time, did not make an order for the Missouri Pacific to deliver two hundred cars?

Mr. Evans: If there is an order he should prove it by the order itself.

Mr. Pryor: They brought that out; we did not ask him [fol. 567] about that.

Mr. Evans: This witness cannot give testimony from hearsay any more than any other witness. If they have a a record showing the state of facts they should put it in.

Mr. Pryor: That is in the form — an instruction.

The Court: They did not ask you about them two hundred cars.

Mr. Pryor: They asked the question that diligence was not being used by the Midland Valley railroad to obtain a return on their cars.

Q. You do not know that application was made to the InterState Commerce Commission?

A. Yes, sir.

Mr. Evans:

Q. Who made it?

A. Mr. A. W. LeFeber.

Q. When?

A. The fall of 1922.

Q. How do you know?

A. Because I got a copy of the circular he put out.

Q. When?

A. Along about that time, September, 1922, in the fall.

[fol. 568] E. H. McCulloch, being called by counsel for defendant, was sworn and testified as follows:

Mr. Pryor:

Q. State your name?

A. E. H. McCulloch.

Q. Where do you live?

A. Fort Smith.

Q. You are the official Court Stenographer for the twelfth Judicial Circuit of Arkansas?

A. Yes, sir

Q. I hand you a transcript of what purports to be a transcript of the testimony in this case made at the former trial?

A. Yes, sir.

Q. Is that a correct transcript of the testimony reported by you in that case?

A. Yes, to the best of my ability.

Q. I will ask you to read page 50 of that transcript the following questions and answers propounded to Thomas Barkley and state if he gave the answers thereto?

A. Yes, sir.

(Q.) Whose writing is that?
(A.) Pete Kaughman.
(*D.*) Do you know him.
(A.) No, sir; I do not know him.

[fol. 569] Cross-examination.

Mr. Evans:

Q. You have to hear the questions and answers?
A. Yes, sir.
Q. You have to put them down in shorthand?
A. Yes, sir.
Q. And then you have to read your notes?
A. Yes, sir.
Q. In making a transcript of the testimony?
A. Yes, sir.
Q. You might make a mistake?
A. Yes, sir.
Q. You do not claim to be infallible?
A. No, sir.
Q. Did he also give the following testimony?

A. (Q.) Did he sign his name here, to this writing here (Indicating)?
(A.) I guess he did: he wrote it.
(Q.) Did he sign his name there (indicating)?
(A.) Yes, I guess so.
(Q.) All that is in his hand writing?
(A.) I do not know.
(Q.) Did you say he wrote that? did he sign his name?
(A.) He signed his name, I suppose.

(Q.) Is that in the same hand writing?
(A.) I do not know.
[fol. 570] (Q.) Does that look like it?
(A.) It looks something like it.

A. Yes, sir.

Here the defendant rested its case.

[fol. 571] Whereupon the plaintiffs introduced the following testimony in rebuttal, to-wit:

PLAINTIFFS' REBUTTAL

S. S. ROBINSON, a witness called by counsel for plaintiff testified in rebuttal as follows:

Mr. Evans:

Q. State your name.
A. S. S. Robinson.
Q. Where do you live?
A. Midland.
Q. How long have you lived there?
A. Since 1890, in that vacinity.
Q. What has been your occupation during that time?
A. Farmer and running a small coal mine.
Q. What was your business in 1922?
A. Running a small coal mine.
Q. Where?
A. Montreal.
Q. This county?
A. Yes, sir.
Q. There was a strike on and the contract expired April 1ist?
A. Yes, and signed a utility contract.
Q. The same as the plaintiff's in this case did?
A. Yes, sir.
[fol. 572] Q. Do you know Mr. Peterbaugh?
A. Yes, sir.
Q. Who does he represent?
A. The McAllester Fuel Company.
Q. Did he come to your place in June 1922?

A. Yes, sir, the latter part.

Q. Did you go with him anywhere?

A. Yes, sir, I went to the Fax Coal Company with him. He came there and insisted on me going with him, and I was running an engine and I told him I could not go and my boy said he would run the engine until we got back and we went over there and Mr. Barkley and Mr. Burnett; and Mr. Barnett was on top and they called him and they told him and they told us Mr. Caudle was handling their coal for 25 or 30¢——

Mr. Pryor: We object. We are not here to try a controversy between Mr. Peterbaugh and the plaintiffs in this case. The defendant has no agent there. Mr. Peterbaush is the agent for the McAlister Fuel Company.

Mr. Evans:

Q That had a witness here that swore that those men made a contract with Mr. Peterbaugh for the output of their mine, and we want to prove by this witness that they did not do it.

[fol. 573] Mr. Pryor: We object to that. He is talking about hearsay testimony. Mr. Peterbaugh is not here.

The Court: Was he the agent of the Midland Valley Railroad Company.

Mr. Pryor: He represented the McAllester Fuel Company.

The Court: I will sustain the objection.

Mr. Pryor: I do not understand. As I take it the proposition before the jury, in order to increase it these men yesterday, and I do not see any purpose in it, they introduce this Mr. Withers who testified that this Mr. Peterbaugh went up there a certain day and made a contract with them to handle the entire output of this mine and that he represented the McAllester Fuel Company to sell the output of their mine and that they repudiated this contract. He swore that they had a contract of that kind and in pursuant of that contract made by this man Peterbaugh that they sent an order confirming it and further stated that they had a call confirming it.

The Court: I will allow that, the objection is overruled. Defendant saved its exceptions.

Mr. Evans:

Q. Tell the Jury about that contract?

A. George Peterbaugh went over than and I went with [fol. 574] him in the car and Mr. Barnett and Mr. Barkley said that Mr. Caudle was buying their coal and he offered more than Mr. Caudle was paying them at present and they told him that if Mr. Caudle would come to his figures that they felt under obligations to Mr. Caudle and that they would let Mr. Caudle have the coal, but if he did not they would let him sell some coal and we got in the car to go away.

Q. That is the sum and substance of it? During 1922, did The McAllester Fuel Company handle any coal of yours?

A. Yes, sir.

Q. Have you any statement sent you by the McAllester Fuel Company showing the price of coal in 1922?

Mr. Pryor: We object to that. The defendant has nothing to do with the price at which the McAllester Fuel Company sold their coal, or any other transaction with the McAllester Fuel Company.

The Court: They would have a right to prove the market price.

Mr. Pryor: They proved that in this case in chief by Mr. Caudle and we proved it by Mr. Weathers, and I do not see that that is rebuttal, at all.

Mr. Evans: This witness Mr. Weathers swore that the McAllester Fuel Company didn't pay more than $5.00 during the fall of 1922 for mine run coal and here is a man that they paid $6.00 for his coal and here is a record of it.

[fol. 575] The Court: For that purpose it is admissible.

The Defendant saved an exceptions.

Mr. Evans:

Q. Did you sell them any mine run coal in 1922?

A. Yes, 15 or 20 cars.

Q. What is the highest price the McAllester Fuel Company paid you?

A. $6.00

Q. Have you a statement or copy of it?

A. Yes, here is an order I collected money for it.

Q. That is from the McAllester Fuel Company (presenting a paper)?
A. Yes, sir.
Q. Have you any fu-ther use for this?
A. Not without it get lost.
Q. I want to put that in evidence as an exhibit?
A. Al- right.

Here the papers referred to was Marked Exhibits L, M and N, and were introduced in evidence as follows:

[fol. 576] EXHIBIT L TO TESTIMONY OF ROBINSON

7660

The McAllester Fuel Company

Order No. 1660

McAllester, 8-17-22.

Robinson Coal Co., Midland, Ark.:

Ship Coal for our Account:
One.
No. cars: Two (2).
Kind of coal: Mine run.
When to ship: At once.
Invoice to us at: $6.00.
Ship open to: City Light & Water Plant.
Town: Augusta, Ark.
Via: Frisco-RI-Augusta RR-interstate.
Remarks: AA 1669.
Invoice instructions: ——.
Filled as follows: ——.

HWS:KH.

The McAlester Fuel Company.

[fol. 577] EXHIBIT M TO TESTIMONY OF ROBINSON

The McAllester Fuel Company

Order No. 1675

McAlester, 8-23-22.

Robinson Coal Co., Midland, Ark.:

Ship coal for our account:
No. cars: Three (3).
Kind of Coal: Mine run.
When to ship: At once.
Invoice to us at: $6.00.
Ship open to: The McAlester Fuel Company.
Town: Omaha, Nebr.
Via: Frisco-Kansas City CB&Q.
Remarks: KA 5521 Filled.
Invoice instructions: ——.
Filled as follows: ——.

HWS:KH.

The McAlester Fuel Company.

[fol. 578] EXHIBIT "N" TO TESTIMONY OF ROBINSON

The McAlester Fuel Company

Order No. 1679

McAlester 8-17-22.

Robinson Coal Co., Midland, Ark.:

Ship coal for our account:
No. cars: Two (2).
Kind of coal: Mine run.
When to ship: At once, few days apart.
Invoice to us at: $6.00.
Ship open to: J. E. Allman.
Town: Dumas, Arkansas.
Via: Frisco-RI-Mp-Interstate.

Remarks: AA 1661.
Invoice instructions: ——.
Filled as follows: ——.

HWS:KH.

The McAlester Fuel Company.

Cross-examination waived.

[fol. 579] THOMAS BARKLEY, being recalled by counsel for plaintiffs testified in rebuttal as follows:

Mr. Evans:

Q. You heard the statement of Mr. Withers that you had a contract with -*eh* McAlester Fuel Company to seel their coal and that you repudiated it?

A. Yes, sir.

Q. Did you hear that statement of Mr. Withers yesterday afternoon?

A. Yes, sir.

Q. To the effect that you had made a contract with the McAlester Fuel Company for the sale of your coal to them and that you repudiated the contract?

A. Yes, sir.

Q. Did he ever come there more than on-e?

A. Not that I know of.

Q. You only saw him once?

A. Once one time.

Q. Tell the jury when it was that you had the conversation?

A. They come up there, on the 23rd of June, him and Mr. Robinson and wanted to buy the coal and ask us what we were getting for — and *and* he said he would handle *it* the coal under the contract we had for working our mine.

Q. The utility contract?

[fol. 580] A. Yes, sir.

Q. Alright?

A. We told him—he stated he would give us 26¢ a ton more than we were getting from Mr. Caudle, and we told him we would call Mr. Caudle that evening and tell him if

he did not meet these prices we would let him have the coal, but that we had a verbal contract with Mr. Caudle to let him have the coal as long as he would give us as good a price as we could secure from any other agent.

Q. Did he say anything about signing an order?

A. I do not recollect what he said about signing an order. We told him we could not tell him until we phoned Mr. Caudle and I believe, stated we would let him know if Mr. Caudle could come to these prices. I called Mr. Caudle that evening and explained it to him and he said he would give the same; and said that any time any raise occurred in the future to let him know and he would try to take care of it. That is about the words that Mr. Caudle said, and my partner, Mr. Barnett, called Mr. Peterbaugh that same evening, I did not calle Mr. Peterbaugh.

Q. Were you present when he called?

A. No, sir he can state that.

Q. You did not call him?

A. No, sir.

[fol. 581] Q. And you were not present when Mr. Barnett called him?

A. No, sir.

Q. Was there any further talk about it?

A. Nothing about the price of coal or anything. Mr. Peterbaugh never said any more about coal and just started away. I told him about Mr. Tyler being there the day before and could not get any cars any more and he said if Mr. Caudle did not give the raise and if we dealt with him he would give us all the cars we wanted.

Mr. Pryor: We object to that, what Mr. Peterbaugh said about cars.

The Court: That is excluded.

Mr. Evans: That is a part of the negotiation between Mr. Peterbaugh and these people what he said -bou*at* seeling his coal is a part of the negotiation.

Mr. Pryor: We object to the statement that Mr. Peterbaugh said he would give them all the cars they wanted, they didn't have any connection with the cars at all. Mr. [fol. 582] Peterbaugh is connected with the McAlester Fuel Company.

Mr. Evans: We want to show the negotiations that actually took place between Mr. Peterbaugh at these mines.

The Court: Let him proceed, I think he will be done in a minute, quicker that way.

Mr. Pryor: We desire to say that the exceptions of the court holds admissible the statement that he states that Mr. Peterbaugh made with reference to getting all the cars they wanted if they de-lt with him, or let him sell the coal.

Mr. Evans: Let that be excluded.

Mr. Charley Evans:

Q. Was there any further statement about the contract?

A. No sir.

Q. That is the sum and substance of it?

A. That is about all of it.

Q. You heard the statement of the defendants' witness Mr. Gower here yesterday afternoon that this *being* of coal was about 27 or 28 inches thick; what was the thickness of the vein of coal you were working?

[fol. 583] A. About an average of three feet and four inches.

Q. Three feet and four inches?

A. Yes, sir, averages that. The coal varies up and down.

Cross-examination waived.

Alton Burnett, being recalled by counsel for plaintiff testified in rebuttal as follows:

Mr. Evans:

Q. You heard the statement of Mr. Withers Yesterday?

A. Yes sir.

Q. About a contract with the McAlester Fuel Company to handle your coal and that you repudiated it?

A. Yes, sir.

Q. Tell the jury about that contract?

A. Well the next day after Floyd Tyler was there Mr. Peterbaugh said that he wanted our coal and asked us the price we were receiving for it and we told him, if I remember correctly; I had to send in after Mr. Barkley and he told him what we were getting for it and who we were selling to and he said that he could raise that price and pay 26c, and

of course, I was interested it was the money I was there for, and I told him that we had a verbal agreement with Mr. [fol. 584] Caudle to *to* let him have our coal as long as he would give the Market price or whatever anybody else would give us. We called Mr. Caudle after we went in and informed him that Mr. Peterbaugh had said regarding the price and told him if he could not come to it we would let Mr. Peterbaugh have the coal; and I told him also that if Mr. Caudle did not come to his price I would call him and let him know and he seemed to be satisfied and we told him what Mr. Tyler said about shutting us down.

The Court: That is excluded.

Q. Did you call Mr. Caudle?
A. Mr. Barkley called Mr. Caudle and said——
Q. Did you call Mr. Peterbaugh?
A. Yes, sir.
Q. Where.
A. At Fort Smith.
Q. Where at at Fort Smith?
A. I do not remember.
Q. Where did you call him from?
A. From Midland.
Q. What part of Midland.
A. From the Central office of the Bell Telephone Company.
Q. You called him over the long distance telephone and told him what Mr. Caudle said about coming to his figures and that you could not let him have the coal?
[fol. 585] A. Yes, sir.
Q. Did you ever receive a letter or order from the McAlester Fuel Company?
A. Yes, sir.
Q. Where is that?
A. I suppose it is at my house somewhere.
Q. Did you open it up?
A. Yes, sir.
Q. When did he order you to ship the cars?

Mr. Pryor: We object; the letter will be the best evidence. He says it is at his house somewhere.
Witness: I do not know where it is or not.

Mr. Evans:

Q. Where is Mr. Withers, is he here?

Mr. Pryor:

A. I do not think so, but he may be here in town.

Mr. Evans: It is my opinion that it was to go to the McAlester Fuel Company.

Q. You say it was an order?
A. Yes, sir.

Mr. Evans:

Q. Wasn't it to go to the McAlester Fuel Company.

Mr. Pryor:

A. I don't remember whether it was or not. I would not introduce it because he has not proved anything and it was not executed and would not have been admissible

[fol. 586] Mr. Evans:

Q. Do you remember when that car was to be shipped?
A. Early part ——.

Cross-examination waived.

Here the parties closed and this was all the testimony introduced on either side in this case.

Thereupon the court upon its own motion gave to the jury the following instructions:

[fol. 587] COURT'S INSTRUCTIONS TO JURY

1. The Court instructs the Jury, that the Railroad Company would not be bound by the statements of Agent Tyler that he would shut down the mine if they did not let the Railroad Co., have their coal, if he made such statement, unless it was within his authority or apparent authority as such agent.

And to the action of the court in giving on its own motion, over the objections of the defendant, Instruction No. 1 the defendant, at the time, saved its exceptions.

2. Preponderance of Evidence.—A preponderance of evidence means a greater wei-ht of evidence; but this is not to be determined merely by the greater number of witnesses testifying in relation to any particular fact or state of facts. It means that the testimony on the part of the party on whom the burden rests must have greater weight in your estimation; have more convincing effect than that opposed to it. If, in your opinion, the testimony on any essential point, is evenly balanced, then the party on whom the burden rests to prove the same by a preponderance of the evidence must be deemed to have failed in regard thereto.

[fol. 588] And to the action of the Court in giving on its own motion over the objections of the defendant, Instruction No. 2, the defendant, at the time, saved its exceptions.

3. Circumstantial Evidence.—The court instructs the jury that while the plaintiff must prove his case by a preponderance of the evidence, still the proof need not be by the direct evidence of persons who saw the occurrence sought to be proved, but facts may also be proven by circumstantial evidence, t*j*at is by the proof of circumstances, if any, such as give rise to a reasonable inference in the minds of the jury of the truth of the facts alleged and sought to be proved, provided such circumstances, together with all the evidence in the case, constitute a preponderance of the evidence.

And to the action of the court in giving on its own motion, over the objections of the defendant, Instruction No. 3 the defendant, at the time, saved its exceptions.

4. Verdict Speaks Truth.—The court instructs the jury that you should find your verdict in accordance with what you honestly believe to be the truth of the case, without regard to whether it is in favor of the plaintiffs or the defendant. You are here to administer justice, based upon the truth of the case, under the law as given you by the court; the truth of the case as you find it from the evidence.

[fol. 589] And to the action of the court in giving, on its own motion, over the objections of the defendant, Instruction No. 4; the defendant, at the time, saved its exceptions.

5. Credibility of Witnesses.—You are the sole judges of the credibility of the witnesses and the weight that should be given to their testimony. It is your duty to reconcile the statements of these different witnesses so as to believe as much of this testimony as you can, but if you cannot do so on account of contradictions, then you have the right to believe the witnesses whom you think the most worthy of credit, and disbelieve the witnesses whom you believe, from the evidence, to be the least worthy of credit. And if you find that any witness has sworn falsely to any material facts in this case you may disregard that part of his testimony, and believe that part which you think to be true, and disbelieve that part which you regard to be false. And in weighing a witnesses' testimony you may take into consideration his candor or lack of candor, hiw knowledge about the things he testifies, the reasonableness or unreasonableness of his testimony, and his interest, if any be shown, in the result of your verdict; and applying your knowledge and observation of human actions, motives and affairs, you will find the truth and present that in your verdict.

[fol. 590] And to the action of the court in giving on its own motion, over the objections of the defendant, Instruction No. 5 the defendant, at the time, saved its exceptions.

6. The court instruct- the jury that the only mode provided by our constitution and laws for deciding questions of facts is by the verdict of the jury. In a large proportion of cases, and perhaps, strictly speaking, in all cases, absolute certainty can not be attained or expected. Although the verdict to which a juror agrees must, of course, be his own verdict, the result of his own convictions, and not a mere acquiescence in the opinions of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor and proper regard and deference to the opinions of each other. You should consider that you are selected in the same manner and from the same source from which any

future jury must be, and there is no reason to suppose that the case will ever be submitted to twelve men more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. And when with this view it is your duty to decide the case if you can conscientiously do so. In conferring together, you ought to pay proper respect to each [fol. 591] other's opinion and listen, with a disposition to be convinced, to each other's arguments. And, on the one hand, if much the larger number of your panel are for the state, a discenting juror shall consider whether doubts in his mind as to the correctness of their conclusions are reasonable in view of the fact that doubts which you may have make no impressions upon the minds of the other men equally honest, equally intelligent with yourself, and who have heard the same evidence with the same attention, with an equal desire to arrive at the truth and under the sanction of the same oath. And, on the other hand, if a majority are for the defendant, the minority ought to seriously ask themselves whether they may not be reasonable and ought to doubt the correctness of their judgment which is not concurred in by most of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellows.

And to the action of the court in giving on its own motion, over the objections of the defendant, Instruction No. 6; the defendant, at the time, saved its exceptions.

[fol. 592] Plaintiffs Requested Instructions Given to Jury

Thereupon the plaintiffs requested the court to give to the jury the following instructions which were given:

Instructions Asked for by Plaintiffs and Given by Jury

1. If the defendant failed, neglected or refused to furnish plaintiff with coal cars in which to ship the output of their coal mine because the plaintiffs refused to sell the defendant coal from their mine at a price less than the

market price of said coal and plaintiffs were damaged by such refusal on the part of the defendant, your verdict should be for the plaintiffs.

And to the action of the court in giving Instruction No. 1, requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

2. If the defendant wrongfully failed, neglected or refused to furnish plaintiffs, upon proper requests therefor by them, coal cars in which to ship the output of their coal mine, and plaintiffs were damaged by such refusal, your verdict should be for the plaintiffs.

And to the action of the court in giving Instruction No. 2, requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

[fol. 593] 3. As a common carrier of coal in car lots the law and Interstate Commerce Commission required the defendant to provide itself with and to furnish upon proper request therefor, to shippers of coal in car lots on its line, a sufficient number of suitable cars in which to ship the coal on its line in accordance with the commissioner's rule of distribution which was originally and usually offered for shipment, and also to anticipate and provide for all such increased shipments of coal on its line as by the exercise of ordinary care and prudence it could anticipate and provide for.

If the defendant failed in its duty in this behalf towards the plaintiffs as alleged in the complaint and the plaintiffs suffered damages thereby your verdict should be for the plaintiffs, Fax Coal Company.

And to the action of the court in giving Instruction No. 3, requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

4. If you find for the plaintiffs you will find in their favor such an amount as will fairly compensate them under the evidence for the damages, if any, which have proximately resulted to the plaintiffs from the failure to furnish cars as set forth in the complaint.

[fol. 594] And to the action of the court in giving Instruction No. 4 requested by the plaintiff, over the objections of the defendant; the defendant, at the time, saved its exceptions.

5. A proximate cause of a result is that cause which in a natural and continued sequence produces the result and without which its result would not have come about.

And to the action of the court in giving Instruction No. 5, requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

6. If you find for the plaintiffs and find that they could and would have made and received net profits on shipments of coal from June 22, 1922, to January 1st, 1923, beyond that they did actually receive during said period if defendant had furnished sufficient coal cars to plaintiffs to take care of their coal shipments, then the plaintiffs are entitled to recover the amount of such addition- net profits as damages in this suit, if such additional net profits are satisfactorily established by the proof.

And to the action of the court in giving Instruction No. 6 requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

[fol. 595] 9. If you — for the plaintiffs you may return a verdict for the aggregate amount of damages which you find established by the proof.

And to the action of the court in giving Instruction No. 9, requested by the plaintiffs, over the objections of the defendant; the defendant, at the time, saved its exceptions.

[fol. 596] DEFENDANTS REQUESTED INSTRUCTIONS REFUSED

Thereupon the defendant requested the court to give to the jury the following instructions which were refused:

1. The court instructs the jury that under the law and the evidence in this case the plaintiffs can not recover and you- verdict should be for the defendant.

And to the action of the court in refusing to give Instruction No. 1, as requested by defendant; the defendant, at the time, saved its exceptions.

6. The court instructs you that under the law and the evidence the plaintiffs are not entitled to recover on the item of the loss of profits alleged in their complaint.

And to the action of the court in refusing to give Instruction No. 6 requested by the defendant, the defendant, at the time, saved its exceptions.

9. The court instructs you that under the law and the evidence that Tyler, the agent, had no authority to demand of Plaintiffs that they set and turn over to the defendant the output of coal from their mine at the price of $3.55 per ton; that said demand if made by the said Tyler was not within the scope of his authority, and the defendant is [fol. 597] therefore not bound by the same, and you will therefore not consider such demand if made.

And to the action of the court in refusing to give instruction No. 9 as requested by defendant; the defendant at the time saved its exceptions.

DEFENDANT'S REQUESTED INSTRUCTIONS GIVEN TO JURY

Thereupon the defendant requested the court to give to the Jury the following instructions which were given:

2. The court instructs you that the burden of proof in this case rests upon the plaintiff to show that the orders of the Interstate Commerce Commission made under and pursuant to the Acts of Congress vesting jurisdiction in the Interstate Commerce Commission in the matter of the distribution of available coal car supply were violated by the defendant, and unless you find that such orders were so violated then, under the law, it will be your duty to return a verdict for the defendant, Railroad Company.

And to the action of the court in giving Instruction No. 2, requested by the defendant, over the objections of the Plaintiffs, the plaintiffs at the time, saved their exceptions.

4. The court instructs you that no agent or agents of the defendant railroad company is authorized under the law to [fol. 598] waive the requirements provided in the rules of the Interstate Commerce Commission or the laws of Arkansas that application for cars must be made in writing to the station of the railroad company, and therefore if the evidence fails to show that the cars were ordered in the manner provided by the rules of the Interstate Commerce Commission, or the laws of Arkansas with reference to demand for cars, then your verdict should be for the defendant Railroad Company.

And to the action of the court in giving Instruction No. 4 requested by the defendant, over the objections of the plaintiffs, the plaintiffs, at the time, save their exceptions.

5. The Court instructs you that under the law a railroad company is entitled to the presumption that its business is being lawfully conducted and therefore the burden of proof in this case is upon the plaintiff to establish that the defendant has violated the provisions of the said Act of Congress, or of the rules and regulations of the Interstate Commerce Commission made pursuant thereto, and if plaintiffs have failed to discharge this burden, then it will be your duty to return a verdict for the defendant, Railroad Company.

And to the action of the court in giving Instruction No. 5, requested by the defendant, over the objections of the plaintiffs; the plaintiffs, at the time, saved their exceptions.

[fol. 599] 12. The court instructs you that if you find from the evidence that during the period complained of the defendant placed box cars at the mine of the plaintiffs to be loaded with coal, and that plaintiffs refused to load such cars, and you further find that at the time the defendant was unable to supply mines upon its line with the required number of open top cars and that the plaintiffs would have been unable to load*ed* the open top cars ordered by them, then the court tells you that under the law and the order of the Interstate Commerce Commission the defendant fully complied with the requirements of the Interstate Commerce Commission and Plaintiffs cannot recover and your verdict should be for the defendant railroad company.

And to the action of the court in giving Instruction No. 12, requested by the defendant, over the objections of the Plaintiffs; the plaintiffs, at the time, saved their exceptions.

14. The jury is instructed that while Railroad Companies are under legal obligations to furnish cars for the transportation of freight upon their lines of road, they are not bound under the law to provide transportation for unfor-seen and unexpected *questions* of freight tendered them upon their line of road, and that in such cases they are only required to use reasonable diligence in the furnishing of cars without discrimination.

[fol. 600] And to the action of the Court in giving Instruction No. 14 requested by the defendant, over the objections of the Plaintiff- the plaintiffs, at the time, saved their exceptions.

15. If you find from the evidence that during the period of time alleged in the plaintiffs' complaint, or from July 1922, to January 1923, that there was an unusual, unforeseen and unexpected demand for coal cars in which to ship coal upon the line of defendant's railroad, and that on account of such unforeseen and unexpected demand for cars the defendant was unable to furnish same, then under the law the defendant would not be liable for failure to do so, and your verdict should be for the defendant Railroad Company.

And to the action of the court in giving Instruction No. 15 requested by the defendant, over the objections of the plaintiff- the plaintiffs at the time, saved their exceptions.

[fol. 601] The court erred in refusing to give Instructions as requested by the defendant as follows:

3. The court instructs you that under the act of Congress approved February 28, 1920, commonly known as the Transportation Act, that the manner of the distribution of the available coal car supply was vested in the Interstate Commerce Commission, and the said Interstate Commerce Commission was given under said act of congress power of authority to adopt rules and regulations with reference to the distribution of said coal car supply, and therefore, the burden would be upon plaintiffs to establish that the rules

and regulations adopted by the Interstate Commerce Commission pursuant to said power and authority given by the Act of Congress were violated and as the proof fails to show any violation of the said Act of Congress or of the rules and regulations of the Interstate Commerce Commission, your verdict should be for the defendant.

And to the action of the court in refusing to give Instruction No. 3, as requested by the defendant, the defendant at the time, saved its exceptions.

But the court modified said Instruction No. 3, asked for by the defendant and gave the same in its modified form as follows:

[fol. 602] 3. The court instructs you that under the act of Congress approved February 28, 1920, commonly known as the transportation Act, that the manner of the distribution of the available coal car supply was vested in the Interstate Commerce Commission, and the said Interstate Commerce Commission was given under said act of congress the power of authority to adopt rules and regulations with reference to the distribution of said coal car supply, and therefore, the burden would be upon plaintiff to establish that the rules and regulations adopted by the Interstate Commerce Commission pursuant to said power and authority given by the Act of Congress were violated and if the proof fails to show any violation of the said act of congress or of the rules and regulations of the Interstate Commerce Commission, your verdict should be for the defendant, Railroad Co.

And to the action of the court in modifying said instruction No. 3, and in giving the same in its modified form, the defendant, at the time, Saved its exceptions.

10. The court instructs you that it is an admitted fact that the plaintiffs ordered two cars for loading at their mines on the days that written orders for said cars were given and it is also an admitted fact that the capacity of plaintiffs' mine was one car a day, and court instructs you that under am*m*endment No. 1 to Service Order No. 25 [fol. 603] issued by the Interstate Commerce Commission on the 17th day of October, 1922, it is therein provided.

"Provided further that from and after October 23 1922, the supply and distribution of open top cars suitable for the loading and transportation of coal to wagon mines shall be subject to the following rule; Upon any day when any such Common carrier or railroad is unable to supply mines upon its line with the required number of open top cars, such cars shall not be furnished or supplied by it to any mine which customarily does not load, or is unable to load such cars with coal within 24 hours from and after the time of placement until all mines upon the line of any such carrier have been fully supplied with such cars."

And to the action of the court in refusing to give Instruction No. 10 as requested by the defendant, the defendant at the time, saved its exceptions.

But the court modified said Instruction No. 10, asked by the defendant and gave the same in its modified form as follows:

10. The court instructs you that if the plaintiffs ordered two cars for loading at their mines on the days that written orders for said cars were given and if you find from the evidence that the capacity of plaintiffs' mine was only one [fol. 604] car per day, and the court instructs you that under amendment No. 1 to Service Order No. 25 issued by the Interstate Commerce Commission on the 17th day of October, 1922, it is therein provided:

"Provided further that from and after October 23, 1922, the supply and distribution of open top cars suitable for the loading and transportation of coal to wagon mines shall be subject to the following rules:

Upon any day when any such common carrier or railroad is unable to supply mine- upon its line with the required number of open top cars, such cars shall not be furnished or supplied by it to any mine which customarily does not load, or is unable to load such cars with coal within 24 hours from and after the time of placement until all mines upon the line of any such carrier have been fully supplied with cars."

And to the action of the court in modifying said Instruction No. 10, and in giving the same in its modified form the defendant, at the time, saved its exceptions.

11. The evidence is uncontradicted that the defendant was unable to supply mines upon its line with the required number of open top cars during the year 1922, and during the period thereof alleged in the plaintiffs' complaint, and [fol. 605] therefore under the order of the Interstate Commerce Commission the defendant was justified in refusing to furnish to plaintiffs' mine the cars ordered by them, and your verdict should be for the defendant.

And to the action of the court in refusing to give instruction No. 11 as requested by the defendant, the defendant at the time, save- its exceptions.

But the court modified said instruction No. 11, asked by the defendant and gave the same in its modified form as follows:

11. If you find from the evidence that the defendant was unable to supply mines upon its line with the required number of open top cars during the year 1922, on account of unprecedented or unforeseen conditions during the period thereof alleged in the plaintiffs' complaint the defendant was justified in refusing to furnish to the plaintiffs' mine the cars ordered by them from the defendant, Railroad Company.

And to the action of the court in modifying said Instruction No. 11, and in giving the same in its modified form, the defendant saved its exceptions.

[fol. 606] 13. The court instructs you that even if the law of the State of Arkansas was applicable that under Section 895 of the Statutes of Arkansas it is provided that a shipper must make written application to the station agent of the railroad company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight and its final destination, and that the railroad company shall furnish same at the place of shipment within six days from 7:00 O'clock A. M. the day following such application, and it appears from the evidence that the plaintiffs failed to comply with this section of the statute of Arkansas with reference to making a demand for cars, and therefore under the laws of Arkansas, if it was applicable, the plain-

tiffs could not recover and your verdict should be for the defendant.

And to the action of the court in refusing to give Instruction No. 13, as requested by the defendant, the defendant, at the time, saved its exceptions.

But the court modified said Instruction No. 13 asked by the defendant and gave the same in its modified form as follows:

13. The court instructs you that even if the law of the State of Arkansas was applicable that under Section 895 of the Statutes of Arkansas it is provided that a shipper must make written application to the Station agent of the railroad Company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, [fol. 607] stating in said application the character of the freight and its final destination, and that the railroad company shall furnish same at the place of shipment within six days from 7 O'clock A. M. the day following such application, and if it appears from the evidence that the plaintiffs failed to comply with this section of the statute of Arkansas with reference to makeing a demand for cars, if it was applicable, the plaintiffs could not recover and your verdict should be for the defendant.

And to the action of the court in modifying said Instruction No. 13, and in giving the same in its modified form, the defendant, at the time saved its exceptions.

16. If you find from the evidence that if plaintiffs had been furnished with the cars demanded by them that on account of the physical condition of the mine and the fact that it was what is termed a wagon-loading mine, that said mine could not have operated profitably during the period that plaintiffs allege that no cars were furnished to them, then under the law the plaintiffs are not entitled to recover for any loss of profits and your verdict should be for the defendant.

And to the action of the court in refusing to give Instruction No. 16, as requested by the defendant, defendant, at the time, saved its exceptions.

But the Court Modified said Instruction No. 16, asked by the defendant and gave the same in its modified form as follows:

[fol. 608] 16. If you find from the evidence that if plaintiffs had been furnished with the cars demanded by them that on account of the physical condition of the mine and the fact that it was what is termed a wagon-loading mine, that said mine could not have been operated profitably during the period that plaintiffs allege that no cars were furnished to them, then under the law the plaintiffs are not entitled to recover for any loss of profits and your verdict should be for the defendant on that issue.

And to the action of the court in modifying said Instruction No. 16, and in giving the same in its modified form, the defendant, at the time, saved its exceptions.

The above and foregoing were all the instructions asked for given or refused on either side in this case.

After the instructions of the court and argument of counsel the jury retired to consider of its verdict; after the Jury had deliverated for a time Counsel for defendant filed the following motion to discharge the jury and declare a mistrial in this case which is as follows:

[fol. 609] [Title omitted]

MOTION TO DISCHARGE THE JURY AND DECLARE A MISTRIAL

Comes the defendant and mo-es the court to discharge the jury that now has under consideration the issues involved in this case, and declare a mistrial thereof, on account of the misconduct of the plaintiffs and one of the juro:s, to-wit: R. A. McEachin and for grounds therefore state: first, that the trial of this case began on the 6th the first day of this term of this court and the trial progressed from day to day until the afternoon of the eights when after arguments of counsel the case was submitted to the jury at three o'clock P. M.; that the jury deliberated until adjourning time, 5:30 O'clock :.M.: that the plaintiff, Alton Burnett, and Juror McEachin live at Midland, a town about

10 miles West of Greenwood: That after the court adjourned on yesterday the said plaintiff and the said juror ro*ad* in the front seat of the plaintiff's car from Greenwood to Midland; and that said plaintiff has been carrying said [fol. 610] juror back and forth in his (plaintiff's) automobile during the progress of the trial and the deliberation of the jury; that these facts were not known to the defendant or defendant's counsel until after this court adjourned until on the afternoon of the 8th, and this motion is filed and presented at the re-convening of the court on the morning of the 9th.

Wherefore, defendant ask- that the said Juror be discharged from ser*b*ing on said jury and that the jury be discharged and that a mistrial be declared.

Midland Valley Railroad Company, by Thomas B. Pryor, Atty.

Duly sworn to by Thomas B. Pryor, jurat omitted in printing.

[fol. 611] Thereupon the defendant, in support of said motion, introduced the following testimony to-wit:

The motion of the defendant to discharge the jury and declare a mistrial in the above entitled cause comin- on for hearing in the court, after the jury had retired to consider its ver*i*dict on the above cause, after the court had convened on the morning of July 9, 1925, the following testimony was introduced by defendant in support of said motion:

Alton Burnett, one of the plaintiffs called as a witness for the defendant, in support of said motion, testified as follows:

Mr. Pryor:

Q. Your name is Alton Burnett?
A. Yes, sir.
Q. Are you one of the plaintiffs in this case?
A. Yes, sir.
Q. You are acquainted with Mr. R. A. McEachin one the jurors in this case?

A. Yes, sir.

Q. Did he ride in your car yesterday afternoon from Greenwood to Midland?

A. Yes, sir.

Q. Have you been bringing him back and forth from Midland to Greenwood, every day in your car to attend court [fol. 612] here at Greenwood?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. Who was with you in your car with him yesterday afternoon?

A. Mr. S. S. Robinson and Mr. Mace Pettis.

Q. Mr. Robinson was one of your witnesses in this case?

A. Yes, sir.

Q. Are you charging Mr. McEachin for that service?

A. I am not allowed to.

Q. I asked you if you were charging him for that service?

A. I haven't any taxi license.

Q. It is a mere favor you are extending to him?

A. Yes, sir.

Q. And have been extending to him since the court has been in session?

A. Yes, sir.

Q. Driving him back and forth from Midland to Greenwood in attendant upon the court?

A. Yes, sir.

Cross-examination waived.

[fol. 613] R. A. McEachin, the Juror in question, called from the jury room as a witness in support of said motion testified as follows, swearing:

Mr. Pryor:

Q. Your name is R. A. McEachin?

A. Yes, sir.

Q. Are you one of the Jurors in the trial of this case?

A. Yes, sir.

Q. You have been riding back and forth with Mr. Burnett? one of the plaintiffs in this case, in his automobile from Midland to Greenwood attending court since court has been in session this term?

A. Yes, sir.

Q. That was free of any expense to you?

A. Yes, sir.

Q. You have not paid him anything for that service?

A. No, sir.

Q. And have not promised to pay him anything?

A. No, sir nothing more than to give him his dinner.

Q. Have you given him his dinner each day he has been here?

[fol. 614] A. Yes, sir.

Q. And you ate at the same place together?

A. Yes, sir, except one day.

Q. You have been here three days and you paid for his dinner two days?

A. Yes, sir.

Q. Was that a compensation for the use of his automobile?

A. No, sir; there was nothing said about that.

Q. How far is it from Midland to Greenwood?

A. About twelve miles.

Q. You live near him in the neighborhood of Midland?

A. Yes, sir.

Q. And he has been bringing you back and forth as a matter of courtesy to you?

A. Yes, sir.

Q. You feel under obligation to him to that extent?

A. I feel under obligation to him that much.

Mr. Evans.

Q. You mean you are under obligation to pay for the noon meal?

A. Yes, sir.

Q. That is the extent of your obligation for the ten or twelve mile ride?

A. Yes, sir.

[fol. 615] Judge J. H. Evans, called by the court as a witness being sworn, testified as follows:

My name is J. H. Evans, I am a lawyer by profession: I am one of the attorneys for the Plaintiffs in this case, and participated in the trial thereof, yesterday afternoon when the court discharged the jury in this case for the day, the court gave them the admonition, the Juror Mr. McEachin, standing in open court stated openly here in the court that he was going back and forth in the automobile with one of the plaintiffs with some of the witnesses in the case; he stated that openly here in court:

Mr. Pryor: I remember his making a statement but I did not catch it. I did not know he was riding in plaintiff's automobile, he said he was going back and forth with one of the plaintiffs.

Mr. Evans: Yes, sir.

Mr. Pryor: We will concede your statement with reference to what he said.

Mr. Evans: He stated here in open court. There is nothing superstitious in this at all.

Mr. Pryor: No sir and I want that to go in the record.

The Court: In your attendant upon court, Judge Evans, [fol. 616] what is the custom that rules in going backward and forward to and from court:

Judge Evans: They come with anybody that is coming, the parties to the case and the lawyers all come and go freely.

Mr. Pryor: Is it customary from your experience and observation that the plaintiffs in any case would carry back and forth to and from court, a distance of 12 miles each way, 24 miles each day in attendance upon court, any juror in his case in his car?

Judge Evans: I never knew that case to arise at any time: The only thing I can say is that I have always seen parties to cases in court and lawyers and judges and jurors travel together without any fear of suspicion of one another.

It was admitted that the testimony of Mr. Charley Evans would be the same as that of Judge J. H. Evans.

This was all the testimony introduced by either side in this motion.

[fol. 617] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Now counsel for the defendant has filed a motion to discharge the jury and to declare a mistrial in the case of Fax Coal Company against the Midland Valley Railroad Company on the ground that one of the jurors, Mr. R. A. McEachin went backwards and forwards with one of the plaintiffs. Mr. Alton Barnett in his automobile, from his place of residence to court; the proof shows that they lived neighbors in the same town and the proof further shows by Judge Evans that it is the custom of jurors, witnesses and lawyers, any of them, coming from the same place to ride together in their automobiles and the court feels that it is such a common custom, that the court would take judicial notice of the custom of people in going to and from the court and the manner in which they go and from the court's experience on the bench during these three past years it has been a uniform custom for the jurors and parties coming from the same neighborhood of neighboring towns to go in the same automobile to save expenses and trouble and in this case there has been no misconduct shown at all on the part of juror, McEachin, and the party Barnett; there has been no conversation shown between them about the case in any way. [fol. 618] The Court admonished the jury not to converse with any of the parties about the case, or with any one about the case at all, or allow any one to talk to them about the case or in their presence or hearing and there is no proof that there was any talk by any party in the automobile about this case or in the presence or hearing of the juror, or that the juror talked to any one about the case. Of course if there had been any corrupt talk such as a talk by the plaintiff to the juror about the case that would have been corrupt, and a corrupt act and violation of the admonition of the court; and there is no question of such talk had been shown the juror would have been disqualified, but now we have entered upon a new day whether us older fellows are willing to admit it or not (and I do not claim that I am old, I am so many years young).

The court is personally well acquainted with the juror, Mr. McEachin and have had a long and intimate acquaintance with him and knows that he is a high minded christian gentleman.

When the court was serving in another capacity as pastor of the Baptist church at Midland Mr. McEachin was a deacon in the church and provided the means of sust-ance for the pastor and his family and the court knows that he would not stoop to any base or corrupt act or deed.

[fol. 619] Mr. Pryor: I do not claim or allege any corruption or corrupt motive on the part of Mr. McEachin I rely upon the facts stated in my motion and admitted by the juror and I am as far as any one from attributing any corrupt conduct to Mr. McEachin and I want the record to so show.

Before the jury returned its verdict in this case the court read to the jury instruction No. 6 and as heretofore set forth in this record the defendant, at the time, saved its exceptions to the action of the court in this regard.

[fol. 620] 2520

VERDICT

7-9-25.

"We the jury find for the plaintiffs and assess the damage at $2,000.00.

(Signed) G. W. Lenear, Foreman."

[fols. 621-626] Motion for a new trial, filed July 10, 1925, omitted; printed side page 43 ante.

[fol. 627] [Title omitted]

The motion of defendant to discharge the jury and declare a mistrial in the above entitled cause coming on for hearing before the court, after the jury had retired to consider of its verdict in the above cause, after the court had convened on the morning of July 9, 1925, the following testimony was introduced by the defendant in support of said motion:

ALTON BURNETT, one of the plaintiffs, called as a witness by defendant in support of said motion, testified as follows:

Mr. Pryor:

Q. Your name is Alton Burnett?
A. Yes, sir.
Q. You are one of the plaintiffs in this case?
A. Yes, sir.
Q. You are acquainted with Mr. R. A. McEachin, one of the jurors in this case.
[fol. 628] A. Yes, sir.
Q. Did he ride in your car, yesterday afternoon, from Greenwood to Midland?
A. Yes, sir.
Q. Have you been bringing him back and forth from Midland to Greenwood, every day, in your car to attend court here at Greenwood?
A. Yes, sir.
Q. Every day?
A. Yrs, sir.
Q. Who were with you in your car with him yesterday afternoon.
A. Mr. S. S. Robinson and Mr. Mace Pettis.
Q. Mr. Robinson was one of your witnesses in this case?
A. Yes, sir.
Q. Are you charging Mr. McEachin for that service?
A. I am not allowed to.
Q. I asked you if you were charging him for that service?
A. I haven't any taxi license.
Q. It is a mere favor you are extending to him?
A. Yes, sir.
Q. And have been extending to him since the court has been in session.
A. Yes, sir.
Q. D-iving him back and forth from Midland to Greenwood in attendance upon the court.
A. Yes, sir.

Cross-examination waived.

[fol. 629] R. A. McEachin, the juror in question, called for the jury room as a witness in support of said motion, testified as follows, swearing:

Mr. Pryor:

Q. Your name is R. A. McEachin?
A. Yes, sir.
Q. You are one of the jurors in the trial of this case?
A. Yes, sir.
Q. You have be-n riding back and forth with Mr. Burnett, one of the plaintiffs in this case, in his automobile, from Midland to Greenwood, attending court, since the court has been in session this term?
A. Yes, sir.
Q. That was free of any expense to you?
A. Yes, sir.
Q. You have not paid him anything for that service?
A. No sir; nothing more than to give him his dinner.
Q. Have you given him his dinner each day he has been here?
A. Yes, sir.
Q. And you and he ate at the same place together?
A. Yes, sir, except one day.
Q. You have been here three days and you paid for his dinner two days?
[fol. 630] A. Yes, sir.
Q. Was that as compensation for the use of his automobile?
A. No sir, there was nothing said about that.
Q. How far is it from Midland to Greenwood?
A. About twelve miles.
Q. You live near him in the neighborhood of Midland?
A. Yes, sir.
Q. And he has been brin-ing you back and forth as a matter of courtesy to you?
A. Yes, sir.
Q. You feel under obligation to him to that extent?
A. I feel under obligation to him that much.

Mr. Evans:

Q. You mean you are under obligation to pay for his noon meal.

A. Yes, sir.

Q. That is the extent of your obligations for the ten or twelve mile ride?

A. Yes, sir.

[fol. 631] JUDE J. H. EVANS, called by the court as a witness, being sworn, testified as follows:

My name is J. H. Evans, I am a lawyer by profession; I am one of the attorneys for the plaintiffs in this case, and participated in the trial thereof. On yesterday afternoon when the court discharged the jury in this case for the day, the court gave them the admonition, the juror, Mr. McCachin, standing in open court stated openly here in the court that he was going back and forth in the automobile with one of the plaintiffs with some of the witnesses in the case; he stated that openly here in court.

Mr. Pryor: I remember his making a statement, but I did not cat-h it I did not know that he was riding in the plaintiff's automobile. He said he was going back and forth with one of the plaintiffs?

Mr. Evans: Yes, sir.

Mr. Pryor: We will concede your statement with reference to what he said.

Mr. Evans: He stated that here in open court. There is No surreptition in this at all.

Mr. Pryor: No, sir; and I want that to go in the record.

[fol. 632] The Court: In your attendance upon court, Judge Evans, what is the custom that rules in going backwards and forwards to and from Court?

Judge Evans: They come with anybody that is coming, the parties to the case and the lawyers and all come and go freely.

Mr. Pryor: It is customary from your experience and observation that the plaintiffs in any case would carry back and forth to and from court, a distance of twelve miles each way, twenty four miles, each day in attendance upon the court, any juror in his case in his car?

Judge Evans: I never knew that case to arise at any time; the only thing I can say is that I have always seen parties to case in court, and lawyers and judges and jurors travel together without any fear of suspicion of one another. It was admitted that the testimony of Mr. Charles Evans would be the same as that of Judge J. H. Evans.

This was all the testimony introduced by either side on this motion.

Order Overruling Motion for New Trial

The court overruled said motion; and to the action of the court in this regard, the defendant, at the time, saved its exceptions.

[fol. 633] And the court having said motion for a new trial under advisement, and being well and sufficiently advised in relation thereto, overruled same; and to the action of the court in overruling said motion for a new trial, the defendant, at the time, saved its exceptions; and prayed an appeal to the Supreme Court of Arkansas, which was granted; and the defendant was given 90 days within which to prepare and file his bill of exceptions in this case.

Order Settling Bill of Exceptions

Now comes the defendant and offers the above *and offers the obove* and foregoing as and for his bill of exceptions in this case and asks that the same be signed and sealed and made a part of the record in this case, which is accordingly done, this 12th day of October, 1925.

John E. Tatum, Judge of Twelfth Judicial Circuit of Arkansas.

Agreement re Bill of Exceptions

The parties hereto by their attorneys of record hereby agree that the foregoing is a true and correct bill of exceptions herein and that same may be filed by the clerk

and become a part of the record in this cause as fully, completely and effectively as though approved, signed and ordered filed by the order of the court or judge trying the cause.

Given under our hands this 12 day of October, 1925.

May and Horton, Evans & Evans, Attorneys of Record for Plaintiffs. O. E. Swan, Thos. B. Pryor, Attorneys of Record for Defendant.

[File endorsement omitted.]

[fol. 634] Supersedeas Bond on Appeal approved and filed July 17, 1925 omitted in printing.

[fols. 635 & 635½] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 636] [Caption omitted]

Minute entry of argument and submission January 17, 1927, omitted in printing.

In Supreme Court of Arkansas

Midland Valley Railroad Company, Appellant,

vs.

Thomas Barkley and Alaton Burnett, Partners as Fax Coal Company, Appellees

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[fol. 637] In Supreme Court of Arkansas

Judgment—February 14, 1927

This cause came on to be heard upon the transcript of the record of the Circuit Court of Sebastian County, Green-

wood District, and was argued by counsel, on consideration whereof, it is the opinion of the Court that there is no error in the proceedings and judgment of said Circuit Court in this cause.

It is therefore considered by the Court that the judgment of said Circuit Court in this cause rendered be, and the same is hereby, in all things, affirmed with costs, and that said appellees recover of said appellant and Charles E. Osborne, surety in the supersedeas bond filed in this cause, the sum of Two Thousand Dollars, with interest at six per cent per annum from the 9th day of July, A. D. 1925, the amount of judgment of said Circuit Court.

It is further considered that said appellees recover of said appellant and said surety all their costs in this Court and the court below in this cause expended, and have execution thereof.

[fol. 638] IN SUPREME COURT OF ARKANSAS

No. 181

MIDLAND VALLEY RAILROAD CO.

v.

BARKLEY

OPINION—February 14, 1927

WOOD, J.:

Plaintiffs below, appellees here, instituted this action against the defendant below, appellant here, to recover damages for failure to furnish cars in which to ship coal from appellee's mine located near Excelsior, in Sebastian County, Arkansas. Appellees alleged in substance that in June, 1922, they were operating under a lease a coal mine on which they had expended, and were expending large sums of money; that the appellant was an Arkansas corporation having a line of railroad extending to appellee's coal mine over which appellees shipped coal in carload lots; that about the date above mentioned when the appellees were preparing to mine and load one car of

coal per day from their mine, the cars containing an average of 45 tons of coal each, the appellant demanded of the appellees that they sell to the appellant their output of coal at a price of $3.75 per ton when coal was selling on the market at a much greater price; that appellant threatened appellees that unless they sold their output of coal to appellant at the above price, the appellant would refuse to furnish appellees with coal cars; that appellees refused to accede to the demand of appellant and appellant thereupon wrongfully refused to furnish the appellees coal cars to ship the output of their mine from August 1, 1922, until Jan. 1, 1923, during which time the appellant only furnished to appellees twelve coal cars. The appellees alleged that the refusal of appellant to furnish coal cars [fol. 639] compelled appellees to shut down their mine. Appellees then set forth in detail the damages alleged to have accrued to them by reason of the alleged wrongful failure of the appellant to furnish coal cars as demanded by the appellees. The concluding portion of the complaint is as follows: "But for the wrongful failure and refusal of defendant to furnish coal cars as aforesaid when and as requested and demanded by the plaintiffs, the plaintiffs would not have been compelled to give up their mine and lease and plaintiffs could and would have mined, shipped and sold from their said mine from January 1, 1923, to September 1, 1923, a period of eight months, twenty cars of coal during each of said months, or a total of one hundred sixty cars of coal during said period, and plaintiffs could and would have realized thereon a net profit of seventy-five dollars per car or a total profit of twelve thousand dollars.

"The plaintiffs have sustained damages in the total sum of thirty-three thousand six hundred seventy-six dollars as hereinbefore set forth in detail as approximate result of the defendant's wrongful failure and refusal to furnish plaintiffs coal cars when and as requested and demanded by them in which to ship coal from their said mine.

Wherefore, the plaintiffs pray judgment against the defendant for the sum of thirty-three thousand six hundred seventy-six dollars, with interest, for costs of suit and for all legal relief."

The appellant demurred to the complaint on the ground that it did not state a cause of action within the jurisdiction of the court, that "the Act of Congress, known as the [fol. 640] Interstate Commerce Act, as amended by the Transportation Acts and other acts of Congress amendatory thereof, confer exclusive authority upon the Interstate Commerce Commission in the matter of distribution of coal cars and jurisdiction in matters of alleged failure to furnish the same. Appellant's demurrer was overruled and it answered denying specifically the allegations of the complaint. It was alleged in substance that under the orders of the Interstate Commerce Commission certain rules and regulations adopted by the United States Railroad Administration in December, 1923, were in effect during the period alleged in the complaint. The appellant alleged that the appellees' mine was what is termed a "wagon-load mine" in that the coal produced at the mine was hauled in a wagon to the spur or switch track upon which it was loaded into the cars and was therefore not rated as mines loaded from a tipple were rated under the rules of the Interstate Commerce Commission. Appellees then set forth certain bulletins issued under the rules and regulations of the Interstate Commerce Commission fixing the rates for tipple mines, which it attached to its answer and made exhibits thereto. The appellant alleged that notwithstanding the appellee's mine was without a rating for furnishing cars under the orders and rules of the Interstate Commerce Commission, the appellant did furnish appellees cars in which to load their coal, but acting under the orders of the Interstate Commerce Commission, when unable to obtain a sufficient supply of open cars or regular coal cars, appellant furnished to appellees box cars in which to ship their coal until the appellees finally refused [fol. 641] to use such cars. The appellant further alleged that from August 1, 1922, to January 1, 1923, there was an unusual and unprecedented and unforseen demand for cars in which to ship coal on appellant's railroad and that appellant was therefore unable to supply the demand for cars to ship coal from wagon-load mines and was not able to supply the demand for cars to mines that loaded directly into the cars by the use of tipple. The appellant

also set up that the claim of the appellees for damages accruing one year prior to the filing of the complaint, was barred by the statute of limitations.

The testimony is exceedingly voluminous and we deem it wholly unnecessary to set forth the testimony bearing upon the issue as to whether or not the appellant failed to furnish cars as alleged in the complaint and if so, the amount of damages appellees sustained by reason of such failure, because if the trial court had jurisdiction of the action, we are convinced that the testimony was amply sufficient to sustain the verdict on the issue of whether or not the appellant failed to furnish cars and also as to the amount of damages which accrued to appellees by reason of such failure. The trial resulted in a verdict and judgment in favor of the appellees in the sum of $2,000. Judgment was entered in favor of the appellees for that sum from which is this appeal.

1. Section 402 of what is designated as the Transportation Act of Congress, February 28, 1920, amends section one of the Interstate Commerce Act, approved May 29, 1917, to read as follows: "(10) The term 'car service' in [fol. 642] this Act shall include the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act."

"(11) It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful."

Paragraph (12) makes it the duty of carriers by railroads to make just and reasonable distribution of cars for transportation of coal among the coal mines served by them whether located upon their own lines or lines dependent upon them for car supply. When the car supply is not equal to the requirements of the mines, it is the duty of the carriers to maintain and supply just and reasonable ratings of such mines and to count each and every

car furnished to, or used by any such mine, for transportation of coal against the mine, and a penalty is attached for failure to comply with this provision.

Under Paragraph 13 the Interstate Commerce Commission is authorized to order any or all carriers by railroad subject to the Act to file with the Commission from time to time their rules and regulations with respect to car service, which rules and regulations shall be incorporated in [fol. 643] their schedules, showing rates, fares and charges for transportation, and making the carrier subject to all provisions of the Act.

Under Paragraph No. 14 the Commission may, after hearing on a complaint, or upon its own initiative, establish reasonable rules, regulations and practices with respect to car service by railroads subject to the Act, and prescribe a penalty for non-observance of these rules, etc.

Under Paragraph 15 whenever the Commission is of the opinion that shortage of equipment, congestion of traffic, or other emergency, with or without complaint, or on its own initiative and with or without notice to the carrier and without hearing or filing of report it is empowered (2) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable, etc. U. S. Statutes at Large, Vol. 41, chp. 91, pg. 476, Sec. 402.

By an Act of Congress, September 22, 1922, U. S. Statutes at Large, Vol. 42, p. 1025, an act was again passed entitled "An Act to declare a national emergency to exist [fol. 644] in the production, transportation, and distribution of coal and other fuel, granting additional powers to the Interstate Commerce Commission, providing for the appointment of a Federal Fuel Distributor, providing for the declaration of car-service priorities during the present

emergency, etc." Section 2 of that act provides in part as follows: "That the powers of the Interstate Commerce Commission under the act entitled 'An Act to regulate commerce', approved February 4, 1887, as amended, including the Transportation Act, 1920, and especially under Sec. 402 of said Transportation Act, 1920, are, during the aforesaid emergency, enlarged to include the authority to issue in transportation of coal or other fuel orders for priorities in car service, embargoes, and other suitable measures in favor of or against any carrier, * * * and to take any other necessary and appropriate steps for the priority in transportation and for the equitable distribution of coal or other fuel so as best to meet the emergency and to promote the general welfare, and to prevent upon the part of any person, partnership, association, or corporation the purchase or sale of coal or other fuel at prices unjustly or unreasonably high. This Act shall not be construed as repealing any of the powers heretofore granted by law to the Interstate Commerce Commission, but shall be construed as conferring supplementary and additional powers to said commission and as an amendment to section 1 of the Interstate Commerce Act, and subject to the limitations and definitions of commerce controlled by said Act, and all powers given said Interstate Commerce Commission shall be applicable in the execution of this Act."

[fol. 645] Learned counsel for the appellant contend that it was the purpose of Congress in the above enactments to vest the Interstate Commerce Commission with supreme power in the matter of distribution of coal cars regardless of whether the coal was to be shipped in intra or interstate commerce. Counsel for appellant say: "It is the contention of the defendant that all state statutes and common law obligations are swept away, as far as the transportation of coal, or the furnishing of cars in which to transport the same, by the provisions of the Transportation Act, and the later emergency act of September 22, 1922." We cannot agree with counsel in this contention.

Section 8 of the Interstate Commerce Act, Vol. 24 Statutes at Large, p. 379, 1 Supp. to Revised Statutes of the United States 529, provides as follows: "That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter,

or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, etc."

Section 9 provides that "any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the [fol. 646] United States of competent jurisdiction."

Section 22 provides in part as follows: "And nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

These provisions of the Interstate Commerce Act approved Feb. 4, 1887 were not repealed expressly or by implication by the provisions of the Transportation Act of Congress of Feb. 8, 1920 and the Emergency Act of September 22, 1922, upon which counsel for appellant relies. On the contrary, the above provisions of Secs. 8, 9 and 22 of the Interstate Commerce Act were in full force and effect when appellee's cause of action is alleged to have accrued. Counsel for the appellees concede that the cars which it is alleged appellant failed to furnish were ordered for and to be used in interstate shipments. Such being the case the provisions of Sec. 22 of the Interstate Commerce Act, supra, confers jurisdiction upon the state court. The question, we believe, is thoroughly settled against the contention of counsel for the appellant by decisions of the Supreme Court of the United States.

In Pennsylvania Railroad Co. v. Puritan Coal Mining Co., 237 U. S. 121, Mr. Justice Lamar, speaking for the court, said: "But sections 8 and 9, standing alone, might have been construed to give the Federal courts exclusive jurisdiction of all suits for damages occasioned by the carrier violating any of the old duties which were preserved and the new obligations which were imposed by the com-

merce act. And, evidently for the purpose of preventing [fol. 647] such a result, the proviso to section 22 declared that, 'nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.' * * * But for this proviso to section 22, it might have been claimed that, Congress having entered the field, the whole subject of liability of carrier to shippers in interstate commerce had been withdrawn from the jurisdiction of the State courts, and this clause was added to indicate that the commerce act, in giving rights of action in Federal courts, was not intended to deprive the state courts of their general and concurrent jurisdiction." It was further declared in that case concerning sections 8, 9 and 22 of the Interstate Commerce Act construing the same as a whole that "it did not supersede the jurisdiction of State courts in any case, new or old, where the decision did not involve the determination of matters calling for the exercise of the administrative power and discretion of the Commission, or relate to a subject as to which the jurisdiction of the Federal Courts had otherwise been made exclusive."

And in the case of Pennsylvania Railroad Co. v. Sonman Shaft Coal Company, 242 U. S. 120, Mr. Justice De Vanter, speaking for the court, among other things, said: "Thus we have held that a manifest purpose of the provision in section 22 is to make it plain that such 'appropriate common-law and statutory remedies' as can be enforced consistently with the scheme and purpose of the act are not abrogated or displaced." Then, after reviewing and reiterating the doctrine of the above case of Railroad v. [fol. 648] Puritan Coal Co., supra, and other cases, he further says: "Applying these rulings to the case in hand, we are of the opinion that a State court could entertain the action consistently with the Interstate Commerce Act. Not only does the provision in section 22 make strongly for this conclusion but a survey of the scheme of the act and of what is it intended to accomplish discloses no real support for the opposing view."

In Texas & Pacific Railway Co. v. Abilene Cotton Oil Co., 204 U. S. 426, at page 446, Chief Justice White, speaking for the court, concerning section 22 of the Interstate

Commerce Act supra, said: "This clause, however, cannot be construed as continuing in shippers a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the act, and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the act should be regarded as cumulative when other appropriate common-law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the act."

The case of Midland Valley Railroad Co. v. Hoffman Coal Co., 91 Ark. 180, was an action by the Coal Company against the railroad company to recover damages for an alleged failure of the railroad company to furnish cars for shipment of coal for interstate shipments. The jurisdiction of the State court was challenged in that case as it is in this. We quoted the above clause from Railway v. [fol. 649] Abilene Cotton Oil Company, and among other things, said: "The case now under consideration involves the liability of the carrier to the shipper for an alleged breach of its common-law or contractual duty for its failure to furnish cars, and does not involve any infraction of the provisions of the interstate commerce act; and we are of the opinion that the suit was properly brought in the state court. This view, we think, is the logical result to be deduced from the reasoning of the authorities cited above and from the opinion of this court in the case of Halliday Milling Co. v. La. & N. W. Rd. Co., 80 Ark. 536. Hence, the court properly overruled the demurrer to the jurisdiction of the court."

The appellant sets up in his answer and makes an exhibit thereto various orders and rules of the Interstate Commerce Commission and the rules adopted by the United States Railroad Administration relating to the supply and distribution of coal cars, which were in effect during the period covered by the appellees' action. We deem it wholly unnecessary to set out and comment upon these rules and the authorities upon which the appellant relies to support its contention that the State court was without jurisdiction. We have examined all these rules and considered the au-

thorities, and especially the decision of the Interstate Commerce Commission in the case of Interstate Commerce Commission v. Victor American Fuel Co. and Salt Lake Rd. Co. of July 20, 1926, and we are convinced that these authorities have no application. As we construe the complaint, no attack is made by the appellees upon the rules and orders of the Interstate Commerce Commission relat- [fol. 650] ing to the supply and distribution of cars by railroads for the shipment of coal. We cannot discover in the complaint any allegation to the effect that the rules and orders of the Interstate Commerce Commission are unreasonable or unfair, that these rules themselves result in unlawful or unreasonable practice or in unjust discrimination or undue prejudice to shippers. That would involve an administrative question over which the Interstate Commerce Commission alone would have jurisdiction.

As is said in Penn. Rd. Co. v. Puritan Coal Co., supra, at page 131: "In a suit where the rule of practice itself is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the judgment and discretion of the administrative power which has been vested by Congress in the Commission. It is for that body to say whether such a rule unjustly discriminates against one class of shippers in favor of another. Until that body has declared the practice to be discriminatory and unjust, no court has jurisdiction of a suit against an interstate carrier for damages occasioned by its enforcement. * * * But if the carrier's rule, fair on its face, has been unequally applied and the suit is for damages occasioned by its violation or discriminatory enforcement, there is no administrative question involved, the court being called on to decide a mere question of fact as to whether the carrier has violated the rule to plaintiff's damage. Such suits, though against an interstate carrier for damages arising in interstate commerce, may be prosecuted either in the state or federal courts."

The Interstate Commerce law which we have quoted [fol. 651] above, makes it the duty of carriers by railroads to make just and reasonable distribution of cars for transportation of coal among the coal mines served by such carrier and when the supply of cars available for service does not equal the requirements of the mines, it is the duty

of the carrier to maintain and apply just and reasonable ratings of such mines and count against such mine each and every cars furnished for transportation of coal. It is the duty of the carrier under the Interstate Commerce Act to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service.

This is purely an action against the appellant company for its failure to furnish cars, which is its common-law, and statutory duty both federal and state. But the allegations of this complaint show that this action is bottomed upon appellant's alleged failure to comply with its common-law or contractual, as well as statutory duty to furnish cars under Secs. 895 and 195 C. & M. Digest. According to the above decisions of the U. S. Supreme Court and our own court, appellee had the right to maintain this action under Sec. 22 of the Interstate Commerce Act. It follows that the court did not err in overruling the appellant's demurrer to the complaint.

2. No useful purpose could be subserved by setting forth and commenting upon the separate instructions given by the court, constituting its charge as a whole to the jury, in submitting the issue of appellant's alleged failure to furnish cars. The appellant in its prayer for instruction No. 1 asked the court to instruct the jury to return a ver- [fol. 652] dict in its favor, which prayer the court refused, and the ruling was correct. In its prayers for instructions numbered 2 and 3 and in a modification of prayer for instruction by the appellee the court in effect told the jury that the burden was upon the appellee to prove that the appellant, in failing to furnish cars, had violated the act of Congress of Feb. 28, 1920, known as the Transportation Act and the rules and orders of the Interstate Commerce Commission pursuant thereto concerning the supply and distribution of coal cars, and if the jury so found their verdict should be for the appellant. It follows from what we have already said in discussing the question of jurisdiction that the court erred in granting these prayers for instruction but they were granted at the request of the appellant. The only issue, as we have seen, that the court should have submitted to the jury was whether or not the appellant wrongfully failed, neglected or refused to furnish the ap-

pellees cars for the shipment of coal from their mines and, if so, the amount of damages appellees were entitled to recover by reason of such neglect refusal or failure. The court submitted this issue to the jury in instructions at the request of the appellees in substantial conformity with the law as announced by this court in numerous decisions, some of the more recent being Gage v. Arkansas Central Rd. Co., 160 Ark. 402; C. R. I. & P. Ry. Co. v. Simms, 161 Ark. 289 and Express Co. v. Bald Knob Fruit Exchange, 162 Ark. 588. In the last case we said: "The law requires a carrier to make reasonable effort to provide instrumentalities for accommodating the business of the localities which it assumes to serve. This is not merely a statutory require-[fol. 653] ment, but it is an elementary principle originating in the common law."

The instructions which the court gave both at the instance of the appellant and the appellees fairly submitted the issues to the jury and the appellant is in no attitude to complain because the instructions which the court gave at its request introduced the issue of whether or not the appellant had violated the Interstate Commerce Act of Feb. 28, 1920, and the rules and orders of the Interstate Commerce Commission pursuant thereto. We are convinced that the appellant was not prejudiced by these rulings of the court in its favor because there was testimony in the record to have warranted the verdict of the jury even if the action had been based on violation of the Interstate Commerce Act and the orders and rules of the Commission passed pursuant thereto, it being assumed that those rules were, on their face, in every respect fair and reasonable.

3. It would unduly extend this opinion to set out all the instructions constituting the court's charge. It suffices to say that we find no prejudicial error to appellant when the charge is carefully analyzed as a whole. Instruction No. 6 of the instructions given by the court on its own motion is a cautionary instruction which the appellant contends is the same instruction as that condemned by us in the case of McGehee & Co. v. Fuller, 169 Ark. 920. The special language of the instruction in the Fuller case complained of is as follows: "On the other hand if a majority are for the defendant the minority ought to doubt the correctness of their judgment which is not concurred in by

most of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to [fol. 654] carry conviction to the minds of their fellows." The language of the instruction which the appellant asks us to condemn in the present case is as follows: "And, on the other hand, if a majority are for the defendant, the minority ought to seriously ask themselves whether they may not be reasonable and ought to doubt the correctness of their judgment which is not concurred in by most of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellows."

After a careful comparison of the instructions, we are convinced that the language is not the same as that used in the Fuller case and the instruction in the present case does not invade the province of the jury. It does not direct or advise the minority of the jury that it is their duty to yield their own independent judgment to that of the majority. The language of the instruction quoted in effect but tells the jury that it is the duty of the minority to seriously compare their own views with the views of the majority and determine in the light of the evidence whether it is more reasonable that the majority should be mistaken in its conclusion than the minority. This part of the instruction, taken in connection with the other part thereof, is but cautionary to the jury, and tells them to endeavor to arrive at a verdict by reconciling, if possible, their conflicting views, but without any of them surrendering their own convictions for the sake of arriving at a verdict by mere acquiescence in the judgment of his fellows without being really convinced of the correctness of such judgment. The instruction is not out of harmony with what we have said [fol. 655] concerning cautionary instructions in the case of McGehee & Co. v. Fuller, supra, and in St. L. I. M. & S. R. Co. v. Carter, 111 Ark. 272; Simonson v. Lovell, 118 Ark. 81, and St. L. I. M. & S. R. Co. v. Devanty, 98 Ark. 83. Indeed the instruction under consideration follows substantially the instructions that were considered and approved by the Supreme Court of the United States in the case of Allen v. United States, 164 U. S. 492-501, which were taken literally from a charge approved by the Supreme Court of Massachusetts in Commonwealth v. Tuey, 8 Cushing 1,

and by the Supreme Court of Connecticut in State v. Smith, 49 Conn. 376, 386.

4. We have carefully examined the record concerning the alleged error of the trial court in refusing to set aside the verdict on account of the alleged misconduct of one of the members of the jury. One of the plaintiffs lived in the same neighborhood with the juror whose conduct is challenged, both of them living in the country some ten or twelve miles from the county seat. This plaintiff, during the progress of the trial and after the cause was finally submitted to the jury for its determination, allowed the juror whose conduct is challenged to ride back and forth in this plaintiff's car. Other persons accompanied them. The juror, as a return for this courtesy and kindness on the part of this plaintiff, paid for the plaintiff's dinner. It is not shown that there was any conversation between the juror and this plaintiff in regard to the case. All the parties who accompanied plaintiff back and forth in the car were required to be in attendance at court. Counsel [fol. 656] for the appellant who made the motion to set aside the verdict on this ground stated that he knew the juror intimately and did not claim or allege any corruption or corrupt motives on his part; he was as far from that as any one and counsel wanted the record to so show. Such being the facts, we are unwilling to say that the integrity of the trial was destroyed by the alleged misconduct of the juror. It cannot be said, under the showing made, that the plaintiff was endeavoring to influence in his favor the mind of this juror. It was conceded, and the court found, that the juror was a man of unimpeachable integrity.

In the case of St. L. Sw. Ry. Co. v. Ellenwood, 123 Ark. 428, we quoted from Brookhaven Lumber & Mfg. Co. v. Ill. Central Ry. Co., 68 Miss. 432, as follows: "While it cannot be too strongly insisted that the stream of justice shall be kept pure—so pure as to afford no suspicion of corrupt or improper intermingling of any foreign or hurtful matter, yet it must not be forgotten that no mere irregularities of behavior in this day of greater and wiser freedom for jurors, at least in civil trials, will be permitted to disturb the stability of judicial procedure." See also Bealmear v. State, 104 Ark. 616. In Jetton v. Toby, 62 Ark. 91, we held that the "treating, feeding, or entertaining of jurors by

the parties or their counsel during the progress of a trial in a cause in which they had been selected as a jury, whatever the motive might be, is highly improper and deserves severe condemnation." But in that case we did not set aside the verdict because of the alleged misconduct, and it occurs to us it would be going too far, under the facts proved in this case, to attribute a corrupt motive to the con-
[fol. 657] duct of the plaintiff and the juror involved. Counsel for appellant could hardly expect the trial court, and this court to believe that a corrupt motive instigated the conduct, when counsel himself did not so believe. This we would have to do before we would be justified in setting aside the verdict.

Upon the whole case we find no reversible error in the rulings of the trial court and the judgment is therefore affirmed.

[fol. 658] Submission of petition for rehearing March 7, 1927, omitted in printing.

[fols. 659–661] Petition for rehearing covering 3 pages filed March 2, 1927, omitted from this print. It was denied and nothing more by order March 14, 1927.

[fol. 662] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—March 14, 1927

Being fully advised, the petition for rehearing filed herein, is by the Court overruled.

[fol. 663] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 664] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR A WRIT OF CERTIORARI

On consideration, of motion of counsel for petitioner in the above-entitled cause, and for good cause shown,

It is now here ordered, that the time within which petitioner may apply for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended for a period of thirty days from this date.

Willis Van Devanter, Associate Justice, Supreme Court of the United States.

June 13, 1927.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 24, 1927

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

MAY TERM, 1927.

MIDLAND VALLEY RAILROAD COMPANY, Petitioner vs. THOMAS BARKLEY, Et Al., Respondents	No.....

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Midland Valley Railroad Company, respectfully petitions this honorable court to grant its writ of certiorari to the Supreme Court of the State of Arkansas and to remove therefrom to this court for review the record in the case, there lately pending, entitled Midland Valley Railroad

Company, appellant, v. Thomas Barkley, et al., appellees, being Number 9498 on the docket of that court, the petitioner herein being the appellant therein. The judgment of the Supreme Court of Arkansas became final on March 14, 1927 (291 S.W. Rep. p. 431). A duly certified copy of the entire record of said cause is herewith presented.

QUESTION PRESENTED

There were several questions involved in this case in the State Court, but the sole question desired to be presented to this court on this petition for certiorari is one of jurisdiction of the State Court. The respondents allege, as a basis for this action, a failure of the petitioner to supply its coal mine with coal cars during the period from August 1, 1922, to January 1, 1923. Under the Act of Congress, approved February 28, 1920, known as the "Transportation Act", and particularly Sections 12, 13, 14, and 15 of said Act, the Interstate Commerce Commission is given power to adopt rules and regulations with reference to the distribution of the available coal car supply, Section 15 providing:

> "Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Com-

mission shall have and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission, etc."

Section 2 of the Supplementary Act of Congress, approved September 22, 1922, provides:

"That the powers of the Interstate Commerce Commission under the Act entitled 'An Act to regulate Commerce,' approved February 4, 1887, as amended, including the Transportation Act, 1920, and especially under section 402 of said Transportation Act, 1920, are, during the aforesaid emergency, enlarged to include the authority to issue in transportation of coal or other fuel orders for priorities in car service, embargoes, and other suitable measures in favor of or against any carrier, including vessels suitable for transportation of coal on the inland waters of the United States, etc."

The question is as to whether these Acts of Congress, giving power to the Interstate Commerce Commission to adopt such rules and regulations with respect to the distribution of coal cars, are to govern or Sections 895 and 915, Crawford & Moses' Digest of the Statutes of Arkansas, which make it obligatory upon a railroad company to furnish all cars that are demanded in the manner provided by the statute. Your petitioner claims that the Acts of Congress, giving to the Interstate Commerce Commission authority to regulate the distribution of coal cars, are supreme, and that some violation of the orders of the Interstate Commerce Commission must be shown, and that the Commission has exclusive power and authority to determine that question before a suit for damages can be maintained.

The Supreme Court of Arkansas, in its opinion, states:

> "This is purely an action against the appellant company for its failure to furnish cars, which is its comman-law and statutory duty, both Federal and State. But the allegations of this complaint show that this action is bottomed upon appellant's alleged failure to comply with its common-law or contractual, as well as statutory duty, to furnish cars under Sections 895 and

915, C. & M. Digest. According to the above decisions of the U. S. Supreme Court and our own court, appellees had the right to maintain this action under Section 22 of the Interstate Commerce Act. It follows that the court did not err in overruling the appellant's demurrer to the complaint."

STATEMENT OF FACTS

The Supreme Court of Arkansas, in its opinion, states:

> "The testimony is exceedingly voluminous, and we deem it wholly unnecessary to set forth the testimony bearing upon the issue as to whether or not the appellant failed to furnish cars as alleged in the complaint, and, if so, the amount of damages appellees sustained by reason of such failure, because, if the trial court had jurisdiction of the action, we are convinced that the testimony was amply sufficient to sustain the verdict on the issue of whether or not the appellant failed to furnish cars and also as to the amount of damages which accrued to appellees by reason of such failure."

The respondents were engaged in operating what is termed a "wagon loading" mine about a mile from the petitioner's railroad. The complaint alleges,

as abstracted in the opinion of the Supreme Court, that:

> "From August 1, 1922, until January 1, 1923, during which time the appellant only furnished to appellees twelve coal-cars. The appellees alleged that the refusal of appellant to furnish coal-cars compelled appellees to shut down their mine. Appellees then set forth in detail the damages alleged to have accrued to them by reason of the alleged wrongful failure of the appellant to furnish coal-cars as demanded by the appellees."

There was a judgment in favor of the plaintiffs for the sum of $2,000.00 damages. The petitioner is precluded from controverting the issue as to whether or not cars were furnished as demanded, by the verdict of the jury, and, therefore, for the purpose of this petition it is conceded that the cars were not furnished as demanded, and the only question that remains to be determined is that of the jurisdiction of the State Court under the Arkansas statute in a suit for damages for a failure to furnish cars as demanded.

REASONS FOR THE ALLOWANCE OF THE WRIT.

(a) The question presented by this petition as

to whether or not the Congress has so legislated with reference to the distribution of the available coal car supply by the railroads of the United States that the common-law and state statutes on the subject are superseded.

(b) If the decision of the Supreme Court of Arkansas in affirming the judgment rendered against your petitioner in this case is permitted to stand, it will materially affect the distribution of the coal car supply by the railroads of the country, and will render nugatory the orders of the Interstate Commerce Commission pertaining thereto.

(c) This court will take judicial notice that the Interstate Commerce Commission has assumed full jurisdiction under the Act of Congress referred to, and has adopted rules and regulations governing the distribution of coal cars by all railroads in the United States (U.S. v. New River Co., 265 U.S. 534).

(d) The Supreme Court of Arkansas has in its opinion decided a federal question of substance and great importance, and not heretofore directly determined by this court, and it is very important that the Act of Congress should be construed by this court.

(e) The principle involved is one of serious importance to all railroads and to the operators

of coal mines in the United States, as it should be determined as to whether or not the statutes of the various states have been superseded by the Acts of Congress.

(f) The Supreme Court of Arkansas is the highest court of said state in which a decision of the question involved could be had.

BRIEF IN SUPPORT OF PETITION

I.

THIS COURT HAS JURISDICTION

The petitioner claims a right and immunity under the Act of Congress approved February 28, 1920, giving to the Interstate Commerce Commission exclusive jurisdiction in the matter of the distribution of the available coal car supply. This right was denied petitioner by the State Supreme Court. Therefore, this court has jurisdiction on certiorari.

Sec. 237 (b), Judicial Code as amended by the Act of February 13, 1925.

II.

SECTIONS 895 AND 915, CRAWFORD & MOSES' DIGEST, OF THE STATUTES, WERE SUPERSEDED BY THE ACT OF CONGRESS OF FEBRUARY 28, 1920.

This court, in the case of G. C. & S. F. Ry. Co., v. Hefley, 158 U.S. 98, said:

"The State statute and the national law

operate upon the same subject matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the State. The State statute must therefore give way."

The Supreme Court of Arkansas, in its opinion, states:

"Counsel for the appellant contend that it was the purpose of Congress, in the above enactments, to vest the Interstate Commerce Commission with supreme power in the matter of distribution of coal-cars, regardless of whether the coal was to be shipped in intra or interstate commerce. Counsel for appellant say: 'It is the contention of the defendant that all State statutes and common-law obligations are swept away, as far as the transportation of coal, or the furnishing of cars in which to transport the same, by the provisions of the Transportation Act, and the later emergency act of September 22, 1922.' We cannot agree with counsel in this contention."

It is further stated in the opinion of the Supreme Court of Arkansas:

"The appellant demurred to the complaint

on the ground that it did not state a cause of action within the jurisdiction of the court, that 'the act of Congress known as the Interstate Commerce Act, as amended by the Transportation Act and other acts of Congress amendatory thereof, confer exclusive authority upon the Interstate Commerce Commission in the matter of distribution of coal-cars and jurisdiction in matters of alleged failure to furnish the same.' Appellant's demurrer was overruled, and it answered, denying specifically the allegations of the complaint."

This court, in the case of United States of America v. New River Company, 265 U.S. 534, said:

"This suit was brought by the appellees against the Chesapeake & Ohio Railway Company and the Virginian Railway Company, competing interstate carriers by railroad, the United States, and the Interstate Commerce Commission, to enjoin the carriers from applying a certain rule (rule 4 of Circular CS-31, revised) for the distribution of coal cars, and to set aside the decision and order of the Commission of December 11, 1922, in certain proceedings instituted by the appellees against the defendant carriers. * * * These rules were established during the period of Federal control of the rail-

roads. After the expiration of that period, the Commission issued a notice, dated March 2, 1920, recommending to carriers and shippers that the rules be continued in effect until experience and further study demonstrated that others would be more effective and beneficial. They were continued by carriers generally."

III.

JURISDICTION OF STATE COURT.

The Supreme Court of Arkansas, in its opinion, further states:

> "Counsel for the appellees concede that the cars which it is alleged appellant failed to furnish were ordered for and to be used in interstate shipments. Such being the case, the provisions of Section 22 of the Interstate Commerce Act supra, confer jurisdiction upon the State Court. The question, we believe, is thoroughly settled against the contention of counsel for the appellant by decisions of the Supreme Court of the United States."

Section 22 of the Interstate Commerce Act referred to by the Supreme Court of Arkansas provides that:

> "Nothing in this act contained shall in any

way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

And the Supreme Court of Arkansas refers to the case of Pennsylvania Railroad Co. v. Puritan Coal Mining Co., 237 U.S. 121, and other cases decided long before the Act of Congress giving jurisdiction over the distribution of coal cars to the Interstate Commerce Commission.

The Supreme Court of Arkansas further says:

"The appellant sets up in his answer and makes an exhibit thereto various orders and rules of the Interstate Commerce Commission and the rules adopted by the United States Railroad Administration relating to the supply and distribution of coal-cars, which were in effect during the period covered by the appellees' action. We deem it wholly unnecessary to set out and comment upon these rules and the authorities upon which the appellant relies to support its contention that the State court was without jurisdiction. We have examined all these rules and considered the authorities, and especially the decision of the Interstate Commerce Commission in the case of Interstate Commerce Commission v. Victor American Fuel

Co. and Salt Lake Rd. Co., of July 20, 1926, and we are convinced that these authorities have no application. As we construe the complaint, no attack is made by the appellees upon the rules and orders of the Interstate Commerce Commission relating to the supply and distribution of cars by railroads for the shipment of coal. We cannot discover in the complaint any allegation to the effect that the rules and orders of the Interstate Commerce Commission are unreasonable or unfair, that these rules themselves result in unlawful or unreasonable practice or in unjust discrimination or undue prejudice to shippers. That would involve an administrative question over which the Interstate Commerce Commission alone would have jurisdiction."

The contention of the petitioner is that, the existence of the rules of the Interstate Commerce Commission being established, there must be some violation of those rules before a cause of action would exist for a failure to furnish cars as demanded.

This court, in the case of N.Y.C. & H. R.R. Co. v. Beaham, 242 U.S. 148, said:

"The transactions in question related to the the interstate commerce; consequent rights and

liabilities depend upon acts of congress, agreement between the parties, and common-law principles accepted and enforced in Federal Courts. *And the carrier is entitled to the presumption that its business is being conducted lawfully.* Citing.

Southern Express Co. v. Byers, 240 U.S. 612.
C. N. O. & T. P. R. Co. v. Rankin, 241 U.S. 319."

IV.

JURISDICTION OF INTERSTATE COMMERCE COMMISSION.

Under the Transportation Act, "it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to, or used by, any such mine for transportation of coal against the mine," and then gives to the Commission the power to determine whether the rules adopted by the carrier are reasonable.

In the case of Corona Coal Co. v. Southern Ry. Co., 266 Fed. 726, Judge Clayton rendered an exhaustive opinion on "the provisions of paragraph 12 of Section 1 of the Interstate Commerce Act, as amended by the Transportation Act of February 28, 1920," and after describing the method pursued in the distribution of coal cars says:

"This case draws the line of demarcation between that class of complaints which may be heard by the courts and the other class that must be dealt with by the commission. If the practice itself is attacked as unfair and discriminatory, the exercise of the judgment and discretion of the commission is called for; but until that body had declared the practice to be discriminatory and unjust no court has jurisdiction of an interstate carrier for damages occasioned by the operation of such practice."

This question is also discussed in the opinion rendered by Judge Westenhaver in the case of Cleveland & Western Coal Co. v. Baltimore & Ohio R.R. Co., 283 Fed. 995, and referring to the opinion of Judge Clayton in the Corona Coal Company case, he says:

"Judge Clayton's view also accords with the present view of the Interstate Commerce Commission, which now has pending before it the question of whether the assigned car rule as applied by defendant is a just and reasonable distribution of cars among coal mines. If I am right in this conclusion, then, whether defendants' method of car distribution is unfair or discriminatory becomes a question in the first instance for the Interstate Commerce Commis-

sion, and the courts may not intervene until after that Commission has heard and determined the question."

The Circuit Court of Appeals for the Fourth Circuit in the case of B. & O. R.R. Co. v. Lambert Run Coal Co., 267 Fed. 776, discusses fully the power of the Commission under the Transportation Act, 1920, and says:

"The Congress has not, however, conferred on coal mines equality among themselves—the right of each mine in time of coal car shortage to be furnished cars in proportion to mine ratings, without regard to the public welfare and safety. Coal is a public necessity. From many causes, crises and emergencies may arise in mine operation, transportation, and unexpected needs of the public, which can not be anticipated and justly provided for by inelastic legislative enactment. It would be strange indeed if the Congress had guarded the private interests of the mines by an inflexible enactment of equality, lodging nowhere the power to relieve the public against unforseen conditions which would make rigid proportionate distribution of cars disastrous to the country or to some portion of it. This would be to confer benefits on individuals at the sacrifice of the public safety and welfare.

"We think the Congress has clearly conferred on the commission the power to grant relief in such conditions."

In the case of Director General of Railroads, et al, v. Viscose Co., 254 U.S. 498, Mr. Justice Clark, delivering the opinion of the Court, said:

"The contention of the carriers, faintly made, that the common law, and not the Interstate Commerce Act, furnished the measure of their obligation to the public, was promptly overruled by the Commission, informed, as it was, by wide experience in traffic affairs and in the administration of the act.

"The importance to the commerce of the country of the exclusive initial jurisdiction which Congress has committed to the Interstate Commerce Commission need not be repeated and cannot be overstated." (Citing cases.)

CONCLUSION

Your petitioner respectfully submits that since the Transportation Act of February 28, 1920, and the later act of 1922, these two acts of Congress constitute the sole and supreme law governing the distribution of coal cars during the period alleged in the complaint, and that a suit for damages based upon alleged discrimination in furnishing cars or the failure to furnish a particular mine with cars necessarily involves a violation of these Acts of Congress and the orders of the Interstate Commerce Commission made thereunder, and such a suit cannot be based upon a common-law obligation or the statutes of Arkansas to furnish cars as they have been superseded by the Acts of Congress. It is respectfully submitted, therefore, that a writ of certiorari should be issued, as prayed.

O. E. SWAN,
VINCENT M. MILES,
THOMAS B. PRYOR,
Counsel for Petitioner.

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the petitioner filed in that court a petition for a rehearing, which was denied on March 14, 1927, and a certified copy of the record obtained and a writ of certiorari presented to this court, which was granted.

SPECIFIC CLAIMS ADVANCED AND RULINGS MADE IN LOWER COURT WHICH ARE RELIED UPON AS THE BASIS OF THIS COURT'S JURISDICTION.

The petitioner claims that the lower court denied petitioner's right to have the demurrer to the complaint sustained under the Act of Congress giving to the Interstate Commerce Commission exclusive jurisdiction in the matter of distribution of the available coal car supply, and in holding that it was the duty of a railroad company to furnish all cars demanded. In the complaint of the respondents it is alleged that the petitioner herein was a railroad company and a common carrier of coal and that its line of railroad extended to various mines in Sebastian County, Arkansas; that petitioner had failed to furnish to respondents, during the period between June 22, 1922, to January 1, 1923, coal cars demanded by them in which to ship the prod-

uct of their coal mine located in Sebastian County, and prayed damages in the sum of $33,676.00. (R. 4). Petitioner filed a demurrer to the complaint in which it alleged:

I.

"That said complaint does not allege facts sufficient to constitute a cause of action within the jurisdiction of this court.

II.

"That the Act of Congress, known as the 'Interstate Commerce Act,' as amended by the Transportation Act and other acts of Congress amendatory thereof, confers exclusive authority upon the Interstate Commerce Commission in the matter of the distribution of coal cars and jurisdiction in matters of alleged failure to furnish same." (R. 5).

The demurrer was overruled by the Circuit Court, and its judgment was affirmed by the Supreme Court of Arkansas.

Petitioner then filed its answer to the complaint of the plaintiffs, denying each material allegation thereof. There was a trial by jury and a judgment in favor of the respondents in the sum of $2,000.00.

THE STATUTORY PROVISIONS UNDER WHICH THIS COURT'S JURISDICTION IS INVOKED.

The petitioner claims that under the Judicial Code of the United States, Section 237, as amended by the Act of February 13, 1925 (43 Stat. at Large, p. 938) it was denied rights, claims and immunities under an Act of Congress. Petitioner claims that the Act of Congress, approved February 28, 1920, vests in the Interstate Commerce Commission exclusive jurisdiction in the matter of the distribution of the available coal car supply. This right was denied petitioner by the Supreme Court of Arkansas.

CASES WHICH SUSTAIN THE JURISDICTION OF THIS COURT

The following cases are believed to sustain the jurisdiction of this court:

U. S., et al., Appellants, v. Berwind-White Coal Mining Co., et al., and companion cases (decided by this Court May 31, 1927.)

L. & N. R.R. Co. v. Brashear et al., 289 S.W. Rep. 1094.

G. C. & S. F. Ry. Co. v. Hefley, 158 U.S. 98.

U. S. of America v. New River Co., 265 U.S. 534.

N. Y. C. & H. R.R. Co. v. Beaham, 242 U.S. 148.

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Cleveland & Western Coal Co. v. Baltimore & Ohio R.R. Co., 283 Fed. 995.

Director General of Railroads, et al., v. Viscose Co., 254 U.S. 498.

A STATEMENT OF THE CASE

The Supreme Court of Arkansas, in its opinion, states:

"Plaintiffs below, appellees here, instituted this action against the defendant below, appellant here, to recover damages for failure to furnish cars in which to ship coal from appellees' mine, located near Excelsior, in Sebastian County, Arkansas. Appellees alleged in sustance that, in June, 1922, they were operating under a lease a coal mine on which they had expended and were exepending large sums of money; that the appellant was an Arkansas corporation, having a line of railroad extending to appellee's coal mine, over which appellee shipped coal in car-

load lots * * * . The appellees alleged that the refusal of appellant to furnish coal cars compelled appellees to shut down their mine. Appellees then set forth in detail the damages alleged to have accrued to them by reason of the alleged wrongful failure of the appellant to furnish coal cars as demanded by the appellees. * * *

"The appellant demurred to the complaint on the ground that it did not state a cause of action within the jurisdiction of the court, that 'the act of Congress known as the Interstate Commerce Act, as amended by the Transportation Act and other acts of Congress amendatory thereof, confer exclusive authority upon the Interstate Commerce Commission in the matter of distribution of coal-cars and jurisdiction in matters of alleged failure to furnish the same.'

"Appellant's demurrer was overruled, and it answered, denying specifically the allegations of the complaint. It was alleged in substance that, under the orders of the Interstate Commerce Commission, certain rules and regulations adopted by the United States Railroad Administration in December, 1923, were in effect during the period alleged in the complaint. The appellant

alleged that the appellees' mine was what is termed a 'wagon-load mine,' in that the coal produced at the mine was hauled in a wagon to the spur or switch-track upon which it was loaded into the cars, and was therefore not rated as mines loaded from a tipple were rated under the rules of the Interstate Commerce Commission."

The court further states in its opinion:

"The testimony is exceedingly voluminous, and we deem it wholly unnecesary to set forth the testimony bearing upon the issue as to whether or not the appellant failed to furnish cars as alleged in the complaint, and, if so, the amount of damages appellees sustained by reason of such failure, because, if the trial court had jurisdiction of the action, we are convinced that the testimony was amply sufficient to sustain the verdict on the issue of whether or not the appellant failed to furnish cars and also as to the amount of damages which accrued to appellees by reason of such failure. The trial resulted in a verdict and judgment in favor of the appellees in the sum of $2,000. Judgment was entered in favor of the appellees for that sum, from which is this appeal."

The court then quotes the Transportation Act of Congress of February 28, 1920, in its opinion, and also the later Act of September 22, 1922, "An act to declare a national emergency to exist in the production, transportation, and distribution of coal and other fuel, granting additional powers to the Interstate Commerce Commission," etc.

The Supreme Court of Arkansas, after quoting the Acts of Congress, in its opinion, further states:

> "Learned counsel for the appellant contend that it was the purpose of Congress, in the above enactments, to vest the Interstate Commerce Commission with supreme power in the matter of distribution of coal-cars, regardless of whether the coal was to be shipped in intra or interstate commerce. Counsel for appellant say: 'It is the contention of the defendant that all State statutes and common-law obligations are swept away, as far as the transportation of coal, or the furnishing of cars in which to transport the same, by the provisions of the Transportation Act, and the later emergency act of September 22, 1922.' We cannot agree with counsel in this contention."

Sections 8, 9 and 22 of the Interstate Commerce

Act, 24 Stat. at Large, p. 379, are quoted by the court, and the court further states:

> "These provisions of the Interstate Commerce Act, approved February 4, 1887, were not repealed, expressly or by implication, by the provisions of the Transportation Act of Congress of February 8, 1920, and the Emergency Act of September 22, 1922, upon which counsel for appellant relies. On the contrary, the above provisions of Sections 8, 9 and 22 of the Interstate Commerce Act were in full force and effect when appellee's cause of action is alleged to have accrued. Counsel for the appellees concede that the cars which it is alleged appellant failed to furnish were ordered for and to be used in interstate shipments. Such being the case, the provisions of Section 22 of the Interstate Commerce Act, supra, confer jurisdiction upon the State court. The question, we believe, is thoroughly settled against the contention of counsel for the appellant by decisions of the Supreme Court of the United States."

The court then in its opinion refers to several cases that were decided before the Transportation Act or the later Emergency Act was passed by Congress, and further states:

"The appellant sets up in its answer and makes an exhibit thereto various orders and rules of the Interstate Commerce Commission and the rules adopted by the United States Railroad Adminsitration relating to the supply and distribution of coal-cars, which were in effect during the period covered by the appellee's action. We deem it wholly unnecessary to set out and comment upon these rules and the authorities upon which the appellant relies to support its contention that the State court was without jurisdiction. We have examined all these rules and considered the authorities and especially the decision of the Interstate Commeerce Commission in the case of *Interstate Commerce Commission* v. *Victor American Fuel Co. and Salt Lake Rd. Co.*, of July 20, 1926, and we are convinced that these authorities have no application. As we construe the complaint, no attack is made by the appellees upon the rules and orders of the Interstate Commerce Commission relating to the supply and distribution of cars by railroads for the shipment of coal. We cannot discover in the complaint any allegation to the effect that the rules and orders of the Interstate Commerce Commission are unreasonable or unfair, that these rules themselves result in unlawful or un-

reasonable practice or in unjust discrimination or undue prejudice to shippers. That would involve an administrative question over which the Interstate Commerce Commission alone would have jurisdiction. * * *

"This is purely an action against the appellant company for its failure to furnish cars, which is its common-law and statutory duty, both Federal and State. But the allegations of this complaint show that this action is bottomed upon appellant's alleged failure to comply with its common-law or contractual, as well as statutory, duty to furnish cars under Sections 895 and 915, C. & M. Digest. According to the above decisions of the U. S. Supreme Court and our own court, appellees had the right to maintain this action under Section 22 of the Interstate Commerce Act. It follows that the court did not err in overruling the appellant's demurrer to the complaint. * * * *

"The only issue, as we have seen, that the court should have submitted to the jury was whether or not the appellant wrongfully failed, neglected or refused to furnish the appellees cars for the shipment of coal from their mines, and, if so, the amount of damages appellees were entitled to recover by reason of such neglect, re-

fusal or failure. The court submitted this issue to the jury, in instructions at the request of the appellees, in substantial conformity with the law as announced by this court in numerous decisions; (citing) Gage v. Arkansas Central Rd. Co., 160 Ark. 402, C. R. I. & P. Ry. Co. v. Simms, 161 Ark. 289,and Express Co. v. Bald Knob Fruit Exchange, 162 Ark. 588. In the last case we said: 'The law requires a carrier to make reasonable effort to provide instrumentalities for accommodating the business of the localities which it assumes to serve. This is not merely a statutory requirement, but it is an elementary principle originating in the common law.'"

Sections 895 and 915, Crawford & Moses Digest of the Statutes of Arkansas, 1921, to which the court refers and which makes it obligatory upon the railroad companies operating in the State of Arkansas to furnish cars upon the request of shippers, make the duty an absolute one regardless of any coal car shortages that may develop, and, therefore, the Supreme Court of Arkansas affirmed the action of the lower court in overruling the demurrer to the complaint, and also held that the trial court committed no error in giving the following instruction to the jury:

No. 2.

"If the defendant wrongfully failed, neglected

or refused to furnish plaintiffs, upon proper requests therefor by them, coal cars in which to ship the output of their coal mine, and plaintiffs were damaged by such refusal, your verdict should be for the plaintiffs." (R. 326).

And the following instruction:

No. 6.

"If you find for the plaintiffs and find that they could and would have made and received net profits on shipments of coal from June 22, 1922, to January 1st, 1923, beyond what they did actually receive during said period, if defendant had furnished sufficient coal cars to plaintiffs to take care of their coal shipments, then the plaintiffs are entitled to recover the amount of such additional net profits as damages in this suit, if such additional net profits are satisfactorily established by the proof."

The instructions given by the court which fallowed the Arkansas statutes make it the unqualified duty of a railroad company as a common carrier of coal to furnish all the coal cars that may be demanded by any coal mine in the state. The question involved is as to whether or not, regardless of the fact that Congress, in the Transportation Act of 1920 and

the later Emergency Act, has singled out coal as a commodity and vested the Interstate Commerce Commission with jurisdiction in the matter of the distribution of the available coal car supply, a cause of action can be predicated upon the failure to comply with the statutes of the state which make the duty absolute to furnish cars as demanded.

SPECIFICATIONS OF THE ERRORS RELIED UPON.

The petitioner makes the following assignments of error:

(a) The demurrer to the complaint should have been sustained.

(b) The error of the court in holding that a railroad company is required to furnish all coal cars that are demanded.

(c) The error of the trial court, which was affirmed by the Supreme Court, in instructing the jury that, if the defendant failed, neglected or refused to furnish the cars as demanded, it was liable for damages.

BRIEF OF THE ARGUMENT.

The only issue involved is one of jurisdiction in

the State Court under a State Statute for damages caused by the failure to furnish coal cars as demanded. Congress has singled out coal from other commodities and has clearly vested the jurisdiction in the matter of the distribution of cars in the Interstate Commerce Commission. The contention of the petitioner is that, in view of the existence of the Act of Congress and the rules of the Interstate Commerce Commission with references to the matter, some violation of those rules must occur before a cause of action would exist for a failure to furnish cars as demanded.

This court in the case of N. Y. C. & H. R. R. Co. v. Beaham, 242 U.S. 148, said:

> "The transactions in question related to the interstate commerce; consequent rights and liabilities depend upon acts of congress, agreement between the parties, and common-law principles accepted and enforced in Federal Courts. *And the carrier is entitled to the presumption that its business is being conducted lawfully.* (Citing) Southern Express Co. v. Byers, 240 U. S. 612. C. N. O. & T. P. R. Co. v. Rankin, 241 U. S. 319."

JURISDICTION OF INTERSTATE COMMERCE COMMISSION.

The Court of Appeals of Kentucky, in an opinion rendered as modified February 4, 1927, in the case of Louisville & N. R.R. Co. v. Brashear, et al. 289 S. W. Rep. 1094, in which the facts were similar to the case at bar, said:

> "The transactions in question related to the the fact that defendant failed to observe its filed rules, or any regulation made and promulgated by the Commission, and thereby discriminated against plaintiffs in the enjoyment of their rights as measured by such rules and regulations. In other words, the only jurisdiction the Perry circuit court had under the facts disclosed by this record when the action was filed was to inquire whether plaintiffs were receiving their just dues under the rules and regulations filed with and made by the Interstate Commerce Commission with reference to the furnishing of cars, and which were in force at the time of the transactions complained of. The action was based upon no such cause of complaint, but wholly and entirely upon the failure of defendant to furnish to plaintiffs a 100 per cent. supply of cars as required by our statute (Section 783), but which, as we have seen, was superseded from and after

the time Congress properly took jurisdiction of the matter."

In the "assigned car" cases, decided by this court May 31, 1927, in the case of U. S., et al., appellants, v. Berwind-White Coal Mining Company, et al., and other cases, the court held:

> "Under Paragraph 12 of Section 1 of the Interstate Commerce Act as added by the Transportation Act of 1920, which provided that it shall be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the mines served by it, that when the supply does not equal the requirements the carrier must maintain and apply just and reasonable ratings and count each and every car furnished to or used by any mine against such mine, and making failure to do so an offense for each car not so counted, the Interstate Commerce Commission shall have administrative discretion to determine how the cars shall be distributed."

In the case of Corona Coal Co. v. Southern Ry. Co., 266 Fed. 726, Judge Clayton rendered an exhaustive opinion on "the provisions of paragraph 12 of Section 1 of the Interstate Commerce Act, as amended by the Transportation Act of February 28,

1920," and after describing the method pursued in the distribution of coal cars says:

> "This case draws the line of demarcation between that class of complaints which may be heard by the courts and the other class that must be dealt with by the commission. If the practice itself is attacked as unfair and discriminatory, the exercise of the judgment and discretion of the commission is called for; but until that body had declared the practice to be discriminatory and unjust no court has jurisdiction of an interstate carrier for damages occasioned by the operation of such practice."

This question is also discussed in the opinion rendered by Judge Westenhaver in the case of Cleveland Western Coal Co. v. Baltimore & Ohio R. R. Co., 283 Fed. 995, and referring to the opinion of Judge Clayton in the Corona Coal Company case, he says:

> "Judge Clayton's views also accords with the present view of the Interstate Commerce Commission, which now has pending before it the question of whether the assigned car rule as applied by defendant is a just and reasonable distribution of cars among coal mines. If I am right in this conclusion, then, whether defend-

ants' method of car distribution is unfair or discriminatory becomes a question in the first instance for the Interstate Commerce Commission and the courts may not intervene until after that Commission has heard and determined the question."

The Circuit Court of Appeals for the Fourth Circuit in the case of B. & O. R. R. Co. v. Lambert Run Coal Co., 267 Fed. 776, discusses fully the power of the Commission under the Transportation Act, 1920, and says:

"The Congress has not, however, conferred on coal mines equality among themselves—the right of each mine in time of coal car shortage to be furnished cars in proportion to mine ratings, without regard to the public welfare and safety. Coal is a public necessity. From many causes, crises and emergencies may arise in mine operation, transportation, and unexpected needs of the public, which can not be anticipated and justly provided for by inelastic legislative enactment. It would be strange indeed if the Congress had guarded the private interests of the mines by an inflexible enactment of equality, lodging nowhere the power to relieve the public against unforeseen conditions which would make

rigid proportionate distribution of cars disastrous to the country or to some portion of it. This would be to confer benefits on individuals at the sacrifice of the public safety and welfare.

"We think the Congress has clearly conferred on the commission the power to grant relief in such conditions."

In the case of Director General of Railroads, et al, v. Viscose Co., 254 U. S. 498, Mr. Justice Clark, delivering the opinion of the Court, said:

"The contention of the carriers, faintly made, that the common law, and not the Interstate Commerce Act, furnished the measure of their obligation to the public, was promptly overruled by the Commission, informed, as it was, by wide experience in traffic affairs and in the administration of the act.

"The importance to the commerce of the country of the exclusive initial jurisdiction which Congress has committed to the Interstate Commerce Commission need not be repeated and cannot be overstated." (Citing cases).

TRANSPORTATION ACT.

Sections 12, 13, 14 and 15 of the Act of Congress

known as the "Transportation Act," approved February 28, 1920, were pleaded in the answer, and appear at pp. 9-10 of the record, and also Sections 2, 3 and 4 of the Act of Congress approved September 22, 1922, which appear in the record at pp. 10-11, and the defendant also pleaded and filed, as Exhibit "A" to its answer, Circular CS-31 (Revised), issued by the United States Railroad Administration Car Service Section during the period of Federal control. Said exhibit appears in the record at pp. 14 to 21 inclusive. This circular was also introduced in evidence (R. 235-242 incl.).

This Court, in the case of U. S. of America v. New River Co., 265 U. S. 534, said:

> "This suit was brought by the appellees against the Cheaspeake & Ohio Railway Company and the Virginian Railway Company, competing interstate carriers by railroad, the United States, and the Interstate Commerce Commission, to enjoin the carriers from applying a certain rule (rule 4 of Circular CS-31, revised) for the distribution of coal cars, and to set aside for the decision and order of the Commission of December 11, 1922, in certain proceedings instituted by the appellees against the defendant carriers. * * * * These rules were established during

the period of Federal control of the railroads. After the expiration of that period, the Commission issued a notice, dated March 2, 1920, recommending to carriers and shippers that the rules be continued in effect until experience and further study demonstrated that others would be more effective and beneficial. They were continued by carriers generally."

This court, in the case of U. S., et al., v. Berwind-White Coal Mining Co., et al., (Assigned Car Cases) supra, also held:

"The Commission contends that Paragraph (12) does not prescribe a complete rule; that it does not require either pro rata distribution of cars or distribution according to the Hocking Valley-Traer rule; that it requires merely that all cars be counted as the basis for determining the pro rata share of each mine; and that it leaves to the Commission administrative discretion to determine how the cars shall be distributed. The Commission's contention is, in our opinion, the sound one."

CONCLUSION.

Petitioner respectfully submits that since the Transportation Act of February 28, 1920, and the

latter act of 1922, these two acts of Congress constitute the sole and supreme law governing the distribution of coal cars during the period alleged in the complaint, and that a suit for damages based upon alleged discrimination in furnishing cars or the failure to furnish a particular mine with cars necessarily involves a violation of these acts of Congress and the orders of the Interstate Commerce Commission made thereunder, and such a suit cannot be based upon a common-law obligation or the statutes of Arkansas to furnish cars as they have been superseded by the Acts of Congress. It is respectfully submitted, therefore, that the judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

O. E. SWAN,
VINCENT M. MILES,
THOMAS B. PRYOR,
Counsel for Petitioner.

(10)

Office Supreme Court
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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 375

MIDLAND VALLEY RAILROAD COMPANY,
PETITIONER,

vs.

THOMAS BARKLEY ET AL., RESPONDENTS.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

O. E. SWAN,
VINCENT M. MILES,
THOMAS B. PRYOR,
Counsel for Petitioner.

(32,827)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 375

MIDLAND VALLEY RAILROAD COMPANY,
PETITIONER,

vs.

THOMAS BARKLEY ET AL., RESPONDENTS.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Preliminary Statement.

This brief is to be supplemental to the brief heretofore filed in support of the petition for a writ of certiorari.

II.

The Facts.

B. & O. R. R. Co. *vs.* Public Service Commission, 81 W. Va., 457; 94 Southeastern Rep., 545, involved

an order of the Public Service Commission as to the distribution of coal cars. In the opinion, bottom of first column, page 547 of the reporter, the court describes the operation of a wagon mine:

> "Until the late fall of 1916 the team track loading mines constituted a negligible quantity in the mining and shipment of coal. Since that time the extreme demand for coal and phenomenally high prices have brought hundreds of them into existence, each one producing only small quantities, and all less than 5 per cent of the total shipments in June, 1917. Under normal conditions they could not profitably operate at all, and, when such conditions are restored, their production will, no doubt, cease. For this reason railroad managers have denominated them 'Snow Bird' mines or shippers. Ordinarily they do not load more than one car a day. They add nothing to the available supply of coal; for the regularly equipped mines are able to produce more than the carriers can transport. Less than 60 per cent of the cars demanded for coal transportation can be supplied, on account of a shortage of cars. The time consumed in the loading of cars by teams delays deliveries. Generally they keep each car assigned to them an entire day and often longer, when it could be loaded elsewhere in a few minutes. Cars placed on side tracks for team loading often have to be shifted off of them and back again, before the loading is completed, in the use of the sidings for other purposes. This involves loss of time of engines and crews, needed in the handling of cars for mines that would load perhaps 50 while they load one.

> These indisputable facts prove the operation of the team track loading mines retards and limits transportation, to the detriment of properly equipped mines, the carrier, and the general public."

All phases of coal car distribution are of importance, particularly to coal carrying roads such as the Baltimore and Ohio Railroad Company. It is obvious, too, we submit, that such distribution is of importance to the mine owners and to the public. This is reflected by the numerous decisions of the Interstate Commerce Commission and of this Court.

In U. S. *et al. vs.* Berwind White Coal Mining Co. *et al.*, the Assigned Car Cases, 274 U. S., 564, it is said:

> "The subject of discrimination in the distribution of coal cars in times of car shortage has occupied much of the time of the Commission ever since its establishment. Some general investigations of the matter were undertaken by it pursuant to resolutions of Congress."

Uniformity in the distribution of cars is essential to the coal mining industry. Without it discrimination will arise between shippers and likewise between State and Federal authorities. There can be uniformity only when there is one standard, and one set of rules, applicable to all shipments, State as well as interstate. It is our contention that uniformity of distribution of coal cars in times of car shortage results from the present terms of the Interstate Commerce Act and the decisions of this Court, and distribution in times

of shortage must be in accordance with the rules of the Interstate Commerce Commission and the Federal statutes and decisions.

The petition in this case is based squarely upon the State statute. The Supreme Court of the State so stated. The question is whether in times of coal car shortage, in this instance following the resumption of operation after a strike, the distribution of cars, which included both State and interstate destinations, is to be controlled by the State statute or by the Interstate Commerce Act.

III.

The Pleadings.

The petition is based upon a wrongful failure and refusal to furnish coal cars. The term "wrongful failure and refusal," and also the language, "was requested and demanded," appears in the petition eight times (R., 2, 3, 4). The petition does not refer to any provision of the Interstate Commerce Act, nor to any provision of the State statutes; nor is there any allegation as to discrimination between shippers.

The railroad company filed a demurrer, and set up the defense that the Interstate Commerce Act conferred exclusive authority on the Interstate Commerce Commission in the matter of distribution of coal cars.

In the answer, the defense as to the Interstate Commerce Act and regulations of the Commission was gone into with detail, and exhibits were attached covering the rules and regulations of the Interstate Commerce Commission in force at that time.

The State statutes involved are Sections 895 and 915 of Crawford & Moses' Digest of the Arkansas laws. Those sections read:

> 895. "When a shipper makes a written application to the station agent of a railroad for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock a. m. the day following the application. Or where the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than six days' notice thereof, computing from 7 o'clock a. m. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application. Said station agent shall give the applicant a receipt for his application for car or cars upon the filing of said application. Provided, that it be the duty of every railroad company in this State to exchange loaded and empty cars in the transportation of such freight, for the purpose of facilitating its movement, with every other railroad with which it connects, forming a rate or route for the shipment of such freight or with which it has or participates in joint rates on such shipments; and for each of such railroads forming such route or having or participating in such joint rates, on demand of such connecting line, to furnish to it, within reasonable time, any such loaded cars as delivered and as many empty cars suitable for carrying such freight as may be de-

livered to it by such connecting carrier, for the purpose of transportation over its line, for delivery at any point on its line; and on demand of the owner thereof, it shall be the duty of such railroad receiving the cars of another to return the same within a reasonable time after demand therefor and within the time and according to the rules and regulations prescribed by the Railroad Commission of the State; provided, this act shall not apply to railroads of two miles in length and to railroads that are not public carriers. For failure to comply with this section, the railroad company so offending shall forfeit and pay to the shipper applicant the sum of five ($5.00) dollars per day or fraction of a day's delay after expiration of the free time, upon demand in writing made within thirty (30) days thereof by the shipper; provided, failure of the shipper to make demand on the railroad company shall not release the railroad company from its liability to the shipper for said forfeiture or demurrage charges."

915. "The commission shall formulate rules for furnishing of cars by railroad companies to shippers for transportation and delivery of freight and other requirements in compliance with this act within thirty (30) days after its passage, and shall publish said rules at least once a week for four consecutive weeks in one of the newspapers in general circulation in the City of Little Rock within sixty (60) days after its passage."

IV.

The Instructions.

Of the instructions requested by the plaintiffs and given by the court, No. 2 reads (R., 326):

> "If the defendant wrongfully failed, neglected or refused to furnish plaintiffs, upon proper requests therefor by them, coal cars in which to ship the output of their coal mine, and plaintiffs were damaged by such refusal, your verdict should be for the plaintiffs."

The third instruction requested by the plaintiffs and given by the court reads as follows (R., 326):

> "As a common carrier of coal in car lots the law and Interstate Commerce Commission required the defendant to provide itself with and to furnish upon proper request therefor, to shippers of coal in car lots on its line, a sufficient number of suitable cars in which to ship the coal on its line in accordance with the commissioner's rule of distribution which was originally and usually offered for shipment, and also to anticipate and provide for all such increased shipments of coal on its line as by the exercise of ordinary care and prudence it could anticipate and provide for.
>
> "If the defendant failed in its duty in this behalf towards the plaintiffs, as alleged in the complaint and the plaintiffs suffered damages thereby your verdict should be for the plaintiffs, Fax Coal Company."

From these it will be observed that No. 2 is without condition of any kind and is in strict accord with the language of the petition, namely, that the defendant failed to supply coal cars as requested and demanded by the plaintiffs.

As to No. 3, although reference is made to the Interstate Commerce Commission and the rules of the Commission, nevertheless nothing is said about ratings, and in the second paragraph the instruction is coupled up with the petition, where the gist of the complaint is the alleged wrongful failure and refusal to furnish coal cars as requested and demanded.

The theory of the trial court, sustained by the Supreme Court of the State, is further borne out by instruction No. 6 of the plaintiffs, which was granted, and which reads (R., 327):

> "If you find for the plaintiffs and find that they could and would have made and received net profits on shipments of coal from June 22, 1922, to January 1st, 1923, beyond that they did actually receive during said period if defendant had furnished sufficient coal cars to plaintiffs to take care of their coal shipments, then the plaintiffs are entitled to recover the amount of such additional net profits as damages in this suit, if such additional net profits are satisfactorily established by the proof."

The basis of that instruction is failure to furnish cars, as requested and demanded, to the plaintiffs to take care of their coal shipments.

The instructions requested by the defendant, which were given by the court, are found beginning at page 328 of the record. These appear to set out the theory of the defendant, if the case were being tried under the Interstate Commerce Act and in accordance with the rules of the Interstate Commerce Commission.

It is our contention that the instructions based upon the State statute should not have been given, and that this error was not cured by the giving of the instructions requested by the respondent on the theory that the case was controlled by the interstate law. The respondent tried to prevent the giving of wrong instructions, but was unsuccessful. The theory of the State law, upon which those instructions were based, was at direct variance with the theory of distribution based on the Federal statutes. It is not sufficient to say that there was evidence in the record to sustain a verdict based upon a violation of the rules based upon the Federal law. The petition having been based on the State law, and the court having instructed the jury accordingly, we submit that no other conclusion can be drawn than that those rulings were wholly prejudicial and led the jury astray. Gilmer *vs.* Higley, 110 U. S., 47; Vicksburg & M. R. Co. *vs.* O'Brien, 119 U. S., 99; Maryland *vs.* Baldwin, 125 U. S., 490.

V.

ARGUMENT.

(a) The decisions of this Court construing the Federal safety statutes support the supremacy of the Federal authorities in distributing coal cars in times of coal shortage.

In Southern Ry. Co. *vs.* United States, 222 U. S., 20, this Court held that the Federal safety appliance statutes embrace all locomotives, cars and similar vehicles used on any railroad that is a highway of interstate commerce.

There was a similar holding in Southern Ry. Co. *vs.* Railroad Commission of Indiana, 236 U. S., 439, involving a conflict with a statute of Indiana.

In the first of these cases, at the close of the opinion, this Court said:

> "Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car, and when this is not the case, the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen and like employees, for they usually, if not necessarily, have to do with both classes of traf-

> fic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train but to others."

In Napier *vs.* Atlantic Coast Line R. Co., 272 U. S., 605, with which were considered two other cases, the court reaffirmed its views, but went even further because of the difference in the language of the statute involved. In the three cases there considered, the Commission had before it the statute of Congress extending to all parts of the locomotive and tender those provisions of the Federal statutes covering the locomotive boiler. There was no specific provision naming any particular part of the locomotive. On the contrary, the statute was of general terms, and provided that those provisions relating to the locomotive boiler should apply to all other parts of the locomotive and tender. This Court held that, notwithstanding, and although the Interstate Commerce Commission had not promulgated any orders relative to automatic fire box doors and cab curtains, nevertheless the intent of Congress was plain, and precluded exercise of authority on the part of the States.

If the coal carrying railroads are required to divide the supply of coal cars, it will mean that a certain

number will be set aside to meet demands under the State statutes, while the remaining cars are used for such orders as may be promulgated under the Federal statutes. This would mean, with a railroad like the Baltimore and Ohio, the possibility of one supply under the Federal rules and seven separate supplies, one for each of the seven States in which coal is mined along that railroad. What these demands under State laws will be no one can foretell until they have been made. To meet those demands, cars would have to be taken from those set aside for distribution under the Federal rules for interstate purposes. The result would be that all shippers would demand a full supply under the State statutes, and there would be no cars to be distributed under the rules contemplated by paragraph 12 of Section 1, and there would be endless confusion and obvious discrimination against the shipper who ordered cars under the Federal rule.

(b) No State statute or order can control the handling of interstate cars.

We submit that the State statute in the case at bar proceeds on the theory that the shipper has a right to an unlimited supply of coal cars at all times. The petition is framed on that basis, and the Supreme Court of the State so found. It is our contention that such a right never existed at common law. Furthermore, we contend that, in view of that right, the present provisions of the Interstate Commerce Act do not exist today.

In Pennsylvania R. Co. *vs.* Puritan Coal Mining Co., 237 U. S., 121, involving discrimination in the distribution of coal cars, this Court said in its opinion, at page 133:

> "Ordinarily a shipper, on reasonable demand, would be entitled to all the cars which it could promptly load with freight to be transported over the carrier's line. But that is not an absolute right, and the carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made and which it could not reasonably have been expected to meet in full. The common law of old, in requiring the carrier to receive all goods and passengers, recognized that 'if his coach be full' he was not liable for failing to transport more than he could carry. Hutchinson on Carriers, 146; Lovett *v.* Hobbs, 2 Shower, 127; Riley *v.* Horne, 2 Bing., 217; Peet *v.* Ry., 20 Wisconsin, 594. The same principle is applicable to those who transport freight in cars drawn by steam locomotives. The law exacts only what is reasonable from such carriers—but, at the same time, required that they should be equally reasonable in the treatment of their patrons."

See also, on this same point, United States *vs.* New River Co., 265 U. S., 533, restricting the mine owner who is located on two railroads to a single supply, and also the Assigned Car Cases, 47 S. C. R., 727. When a coal car shortage occurs the carrier's "coach be full." We contend that in such an event the carrier cannot be required to perform the impossible.

Certainly, as to interstate cars, the State statute should have no effect.

In Missouri Pacific R. Co. *vs.* Stroud, 267 U. S., 404, was involved a Missouri statute authorizing treble damages for discrimination, based on the failure to supply cars. This Court held that the State statute had no effect upon interstate cars, because Congress had legislated on the matter of discrimination, including discrimination in the distribution of cars.

A similar decision was reached in C., R. I. & P. R. Co. *vs.* Hardwick Farmers' Elevator Co., 226 U. S., 426, where a State statute for the delivery of cars was held inoperative as to interstate shipments.

In St. L., I. M. & S. R. Co. *vs.* Edwards, 227 U. S., 265, the court held an Arkansas statute ineffective in attempting to apply demurrage on interstate shipments contrary to the interstate tariff.

That this is true as to all cars handling interstate commerce will not, we take it, be denied. However, it is our contention that, in times of car shortage, in so far as coal cars are concerned, the same principle applies to all coal cars, whether hauling State or interstate commerce.

It is true that in paragraph 4 of Section 1, the act states it to be the duty of every common carrier to provide and furnish cars upon reasonable request therefor. The only condition apparently annexed to this duty is contained in the expression "upon reasonable request." However, in the same section, paragraph 9, relating to the construction of a switch connection with a lateral, branch line or private side track,

obligates the carrier to furnish cars for traffic over such line "to the best of its ability, without discrimination in favor of or against any such shipper."

Section 22, which is stressed in the opinion of the State court in the case at bar, provides, in paragraph 1, "and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

All these provisions, paragraphs 4 and 9 of Section 1, and that part of Section 22 just quoted, were in effect prior to the addition of paragraphs 10, 11, 12, 13, 14 and 15 to Section 1. These last-named paragraphs are special and go into detail as to the supply and distribution of cars, paragraph 12 being exclusively devoted to the distribution of coal cars in time of shortage.

The situation here, then, is that we have amendments to the Interstate Commerce Act dealing with a specific phase of car supply, enacted after the provisions relating to the general distribution of cars. Under these circumstances, this Court, we contend, has held that the later and special supersede the earlier and general provisions.

Then, again, as to Section 22, it is our contention that at common law the right did not exist in a shipper to get cars on the basis of 100 per cent of his demands. See, as to this, Pennsylvania R. Co. *vs.* Puritan Coal Co., 237 U. S., 121, 133, as quoted above.

Moreover, this Court in that case (237 U. S., 121, at 129), in referring to the particular part of Section 22 now under consideration, said:

> "That proviso was added at the end of the statute—not to nullify other parts of the act or to defeat rights or remedies given by existing sections—but to preserve all existing rights which were not inconsistent with those created by the statute."

We submit that there is an obvious inconsistency between the obligation demanded by the State statute and the obligations created under the Interstate Commerce Act. The State statute requires that carriers furnish cars upon demand, fixing a period of six days for compliance. The provisions of the Interstate Commerce Act, on the other hand, provide for rules and ratings and the distribution of cars in accordance therewith, obviously making impossible, if those rules were pursued, a distribution to fulfill all the demands of the shipper.

(c) The present Federal statutes require uniformity of distribution of all coal cars in times of car shortage in accordance with the interstate rules and Federal statutes.

At the time of Illinois Central R. R. Co. *vs.* Mulberry Hill Coal Company, 238 U. S., 275, there was little then in the Federal statutes relative to car supply. What there was is quoted in part in the opinion, bottom of page 280. That part of the statute (paragraph 3, Section 1) referring to cars reads:

> "The term 'transportation' as used in this act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and

> facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof * * *."

In paragraph 4 of the same section, the statute provides:

> "It shall be the duty of every common carrier subject to this act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor * * *."

Nowhere is there any special reference to coal cars, or to duties in times of coal shortage.

To be compared with that rather meager provision are the present statutes, paragraphs 10, 11, 12, 13, 14 and 15 of Section 1, which for ready reference we carry as an appendix hereto.

We call particular attention to paragraphs 11 and 12 of Section 1, which read:

> 11. "It shall be the duty of every carrier by railroad subject to this act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful."
>
> 12. "It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon

its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States."

Paragraph 12 is directed specifically against the distribution of coal cars, and requires the carriers to maintain and apply ratings, and to count each car furnished to or used by any mine for trasportation of coal, whenever conditions in the industry are such that the supply of cars available for such service does not equal the requirements of the mines.

Paragraph 12 becomes effective at once upon the arising of the emergency named, to-wit, "during any period when the supply of cars available for such service does not equal the requirements of such mines." It is not restricted to mines that ship coal in interstate commerce. It contains no exceptions in favor of State statutes. The statute does not require any finding by the Interstate Commerce Commission to determine when a car shortage exists. Under the rules

as to coal car distribution, every mine owner, by the publication of the number of cars available and the number of cars demanded by the shippers, as well as publication of the past performance of the mines, knows what cars are available, and what every shipper will receive under those rules from day to day. Everyone connected with the industry knows at once that there is a car shortage, whenever that car shortage develops. The statute is mandatory that when such a shortage occurs the carriers must comply with paragraph 12, without awaiting an order from the Interstate Commerce Commission. It is our position that the carriers can not so comply unless there be enforced a single standard, and all State statutes give way during periods of coal car shortage.

(d) This construction of the statute is sustained by recent decisions of this Court.

In Avent *vs.* United States, 255 U. S., 127, the court considered an order of the Interstate Commerce Commission promulgated under favor of paragraph 15 of Section 1, for preference or priority in the movement of coal. It is true that there was an order by the Commission finding the necessity for such priority order. However, paragraph 12, which specifically relates to the handling of coal cars, likewise contains a condition precedent to the effective operation of that paragraph, namely, a period when the supply of coal cars available does not equal the requirements of the mines. Paragraph 12 is more drastic, since it requires

compliance immediately upon the happening of the condition therein set out.

In the Avent case, this Court said:

> "That in such circumstances Congress could require a preference in the order of purposes for which coal should be carried * * *. That it can do so without trenching upon the powers reserved to the States seems to us not to need argument * * *. That it can give the powers here given to the Commission, if that question is open here, no longer admits of dispute * * *. The statute confines the power of the Commission to emergencies and the requirement that the rules shall be reasonable and in the interest of the public and of commerce fixes the only standard that is practicable or needed."

If Congress can delegate power to the Commission to determine when an emergency exists preliminary to issuing priority orders, it can, we contend, by statute itself fix the conditions under which the carriers shall maintain ratings and distribute cars to the mines. This it has done in paragraph 12 of Section 1. It is our contention that if the order in the Avent case is lawful, then it follows that Congress can, through paragraph 12, legislate as it has there done "without trenching upon the powers reserved to the States;" provided, of course, the emergency contemplated by the statute has come into existence.

We also call attention to two cases akin to the Avent case, to wit, United States *vs.* Koenig, 270 U. S., 512, and United States *vs.* Michigan Portland Cement Co.,

270 U. S., 521, involving priority orders as to distribution of coal, and in which the Avent case was followed:

We further call attention to the assigned car cases, United States *et al. vs.* Berwind White Coal Mining Co. *et al.*, 274 U. S., 564. The order of the Commission there involved was considered very far reaching. It required the carriers to count all cars, whether owned by foreign railroads or by private shippers, and applied to all carriers, whatever the character of the consignor or consignee of the shipment might be, and (we quote from the opinion of the court) "whatever the use to which the coal is to be put." The purpose of the order as this Court said, was "to prevent unjust discrimination among mines or shippers, and to provide reasonable service." The court then quotes paragraphs 12 and 14 of Section 1. In response to the argument, which was most strongly urged, that the rule prescribed absolute uniformity, regardless of the necessities of the railroad or of the consumer, and regardless of the ownership of the mines or the cars, or the character of the business done by the mine or its customer, this Court said:

> "We cannot say that it was arbitrary and unreasonable for the Commission to conclude that good service could be secured by a uniform rule which might be departed from with its consent and that unjust discrimination could not be prevented without such a uniform rule. It acted in the light of a rich experience. It had learned by experience that the existing practices resulted in discrimination and unsatisfactory service. It had learned, also through experience,

> that the emergency powers conferred by the Transportation Act, 1920, afforded adequate means of supplying the needs, and of averting the possible hardships and losses, of carriers and of private coal consumers, to which the evidence and arguments had been largely directed. For the Commission had had much experience in applying these emergency powers in connection with the distribution of coal cars in times of car shortage, before it prescribed the rule here challenged. Moreover, so far as concerns railroad fuel cars, the operation of the rule as modified from time to time by emergency orders would resemble the practice of the car service section of the railroad administration during Federal control."

Of course, it must be presumed that the Congress, in enacting paragraph 12, had adequate information on the subject, and acted in the light of existing conditions. Its conclusion as to the appropriate remedy is, we contend, entirely within its powers. Paragraph 12 establishes an emergency as a condition precedent to the ratings going into effect, but when that emergency arises the carriers must make it effective, and must make it uniform, regardless of the ownership of the cars or the character of the business done by the mine.

In United States *vs.* New River Co., 265 U. S., 533, this Court sustained an order of the Commission as to the distribution of coal cars to mines located on more than one railroad, calling attention to the provisions of the statute as to the distribution of coal cars.

including paragraph 12 of Section 1, and stated that "the Interstate Commerce Act confers power on the Commission to regulate the distribution of cars * * * and its jurisdiction over the subject is exclusive."

(e) This construction of the statute is sustained by decisions of other courts.

In L. & N. R. Co. *vs.* Brashear, 217 Ky. 439, 289 Southwestern Rep. 1094, the question was whether, notwithstanding general order No. 14 of the Interstate Commerce Commission, a mine operator could insist upon a full supply of cars under the State statute.

The court held that although the wagon mine operator was entitled to cars, still, in view of the statutes of Congress, the rules sanctioned by the Interstate Commerce Commission had precedence over the State statute. Here, as in the case at bar, complainant relied upon the State statute. The Kentucky court held that under the authority of B. & O. R. Co. *vs.* Lambert Run Coal Co., 267 Fed., 776; 258 U. S., 377, the case should have been dismissed for want of jurisdiction in the State court, in that the questions involved were of exclusive Federal jurisdiction, either before the Interstate Commerce Commission or the appropriate District or Circuit Court.

In B. & O. R. Co. *vs.* Public Service Commission, 81 W. Va., 457; 94 Southeastern Rep., 545, was involved an order of the Public Service Commission of the State acting under a State statute, setting aside

a regulation of the Railroad Company as to the distribution of coal cars. The syllabus is by the court. Paragraphs 4 and 5 read:

> "In view of a great shortage of cars suitable for coal shipments, occasioned by extraordinary conditions bringing into temporary activity a great many mines that are not equipped with tipples for loading cars, but demand pro rata allotments to them of open-top cars for their shipments, which can not be furnished without serious detriment to permanent and properly equipped mines, the carrier, and the general public, a railroad company of which such allotments and distributions are demanded may, by promulgation of a regulation applicable to all such mines, assign its open top cars to the permanent and properly equipped mines and box cars to those loading without tipples and from wagons and trucks. Such a regulation, under such circumstances, is neither unreasonable nor unjustly discriminatory."
>
> "In so far as section 66c of chapter 54, Code of 1916, contemplates equality of transportation facilities among shippers of coal, in point of mere convenience, not reasonable means of transportation within the ability of the carrier, it applies only to mining industries having efficient and usual equipment for loading coal cars."

The Kentucky court in L. & N. R. Co. *vs.* Brashear, 217 Ky., 439, *supra*, cites Harp *vs.* Choctaw, O. & G. R. Co., 125 Fed. Rep., 445 (C. C. A. 8), where the railroad company refused to continue a practice of permitting mines operated with hand shovels and

wagons to load cars on side tracks. At page 450 of that opinion it is said:

> "This power to make reasonable regulations with respect to the manner in which it will receive commodities for transportation implies the existence of a power on the part of a common carrier to change or modify such regulations from time to time upon reasonable notice to the public, as otherwise it might be compelled to pursue a particular practice of receiving goods which it had once adopted, and was at the time attended with no inconvenience, after that practice had become exceedingly inconvenient and burdensome both to itself and the public. It is manifest, we think (indeed, so manifest that we might almost take judicial notice of the fact), that no railroad constructed through extensive coal fields and engaged in transporting coal to market could for any considerable period follow the practice of setting out cars on its station side tracks, some distance from the place where coal is mined, and permitting coal to be hauled thence by wagons and loaded into the cars by the slow process of shoveling. The useless consumption of time, and the additional expense incident to the handling of the commodity in question, in large quantities, in that primitive manner, would occasion great public loss and inconvenience, to say nothing of the loss sustained by the carrier, and the serious manner in which that method of handling coal would interfere with the movement of its trains and the transaction of its other business."

If the holding of the eighth circuit in this case is sound (and we maintain that it is), namely, that the railroad company has a right to change its rules and regulations, as long as the changed rules are reasonable in their nature, all the more would they have the right—in fact, it would be their duty—to make changes to comply with the mandatory provisions of paragraph 12 of Section 1.

In Robinson *vs.* B. & O. R. R. Co., 129 Fed., 753 (C. C. A. 4), the railroad company had permitted loading by wagons of coal cars at a station siding, and to prevent the company from discontinuing this practice the shipper had obstructed the station grounds. The shipper was enjoined from so interfering. In the opinion, at page 755, the court says:

> "The appellants' principal justification was that they had before the notice been in the habit, from time to time, of shipping small quantities of coal at Walker's Siding. The reply to this by the railroad company was that on account of the scarcity of other coal in the winter of 1902, and the rise in price, the quantity shipped at Walker's Siding became so great that it interfered with other merchandise, and the railroad company was compelled, in the reasonable regulation of its business, to provide another place for shipping coal from Fairmont."

In Majestic Coal & Coke Co. *vs.* Interstate Commerce Commission, 162 Fed., 810, an injunction had been prayed against an order of the Interstate Commerce Commission as to the use of assigned cars. The

court sustained the order, although it was claimed that the order applied to private and foreign fuel cars which were used only in interstate transactions.

A similar holding was made in Penn. R. Co. *vs.* Interstate Commerce Commission, 193 Fed., 81.

(f) Sections 13 and 15a of the Interstate Commerce Act do not militate against the position of the railroads.

Section 13 is popularly referred to as the Shreveport section, because of the decision of this Court in Houston East & West Texas R. Co. *vs.* United States, 234 U. S., 342. Section 13, among other things, provides for a hearing to determine whether any rate or regulation or practice imposed by a State authority unduly interferes with or discriminates against interstate commerce. By its terms, it calls for an investigation by the Interstate Commerce Commission, with notice to the State authorities. The case at bar does not involve Section 13. It did not arise as a result of any complaint before the Interstate Commerce Commission as to the discriminatory character of the Arkansas statute. It arose in a State court, in a suit brought by a mine owner for damages because of failure to comply with a State statute. The railroad company complains here because of the failure of the State court to give due force and effect to the provisions of the Interstate Commerce Act relative to the distribution of coal cars, and attacks the application of the State statute where the conditions prescribed in the interstate commerce law exist. What we have heretofore

said concerning the difference between paragraph 12 of Section 1 and other portions of Section 1 relating to priority orders applies here also, in that Section 13 requires preliminary action on the part of the Commission, in finding certain facts to exist, whereas paragraph 12 of Section 1 fixes its own standard when its provisions become effective.

The same observations may be made as to the provisions of Section 15*a* of the Interstate Commerce Act, in so far as action by the State authorities may affect the financial return to the carriers, the leading case under this section being the so-called Wisconsin rate case—Railroad Commission of Wisconsin *vs.* C., B. & Q. R. Co., 257 U. S., 563. Here, too, Section 15*a* requires an investigation by the Commission and a finding of certain facts. In the Wisconsin rate case this Court disclaimed any intention of construing Section 15*a* as giving to the Interstate Commerce Commission unified control of interstate and intrastate commerce. The railroads here are not contending that such uniform control as to the distribution of coal cars exists under all circumstances, but do contend that where a coal-car shortage arises, as set forth in paragraph 12, then the unified control automatically becomes effective.

Moreover, the nature of the subject covered by these respective provisions of the Interstate Commerce Act, to wit, paragraph 12 of Section 1, and Sections 13 and 15*a*, supports the contention of the carriers in the case at bar.

The effects of orders of the State authorities in so far as they concern the rates and revenues of the carriers do not automatically reveal themselves, and do not in and of themselves necessarily involve a discrimination against interstate commerce. There are many factors requiring investigation before a conclusion on these questions can be reached, so that Congress has made provision for such a preliminary determination by the Interstate Commerce Commission before the provisions of Sections 13 and 15*a* become effective.

Under paragraph 12 of Section 1, Congress has not provided for any preliminary determination. The carriers handle the supply of coal cars as a unit, and distribute them among the mines regardless of the character of the commerce in which the cars are to be used. If the shipper under the State law is to receive cars on an unlimited basis, it is obvious that there can be no distribution in accordance with ratings and on a uniform basis, to meet the requirements of paragraph 12 of Section 1.

VI.

Conclusion.

Although in the case at bar there is only a small coal mine involved, still the importance of the question to the carriers and those engaged in the coal industry is large. During such periods, when the supply of coal cars available for the transportation of coal does not equal the requirements of the mines, it is

obvious that the prices of coal go up, and it is further obvious that such mines that are able to get cars have advantages over those mines that do not get cars. It is immaterial whether that advantage results through the connivance of the carrier, or whether it results because of attempted compliance by the carrier with an order of the State authority. When the supply of coal cars available does not meet the requirements of the coal mines, then every empty coal car becomes of importance to the mining industry. Situations such as in the case at bar can readily be multiplied many fold, especially where the great coal carrying railroads are in operation, the result being that thousands of cars may be involved as a result of supplying these wagon mines or other shippers in accordance with the State authorities rather than under the uniform regulations of the carriers in force because of the provisions of paragraph 12. Under the provisions of paragraph 12, the carriers, without awaiting word from anyone, must maintain and apply just and reasonable ratings to the mines on its railroad, and count every car furnished to such mines for loading coal against the total supply available for such mine, whenever the available supply does not equal the demand.

It is our contention that it was a wise provision to dispense with any preliminary action on the part of the Commission. Preliminary action would make for delay, which would be a handicap during a period of coal-car shortage. The practice of each road pooling all its coal cars into one single car supply was recognized by Congress. This could not be done if the

various States had power to require an unlimited car supply. If there are not enough cars to meet the total demand, and out of the available supply the shippers demanding cars under the State law are to have all the cars they want, then the available supply is to that extent diminished, and only the residue is left to meet the demands under paragraph 12.

Wherefore, we respectfully submit that the court in the case at bar should find in favor of the railroad company, and should also find that by reason of the provisions of paragraph 12 of Section 1, and the other provisions of Section 1, relating to coal-car distribution in times of car shortage, the authority of the State to regulate the subject is suspended in times of coal-car shortage.

Respectfully submitted,

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VINCENT M. MILES,
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Counsel for Petitioner.

APPENDIX.

(Paragraphs 10, 11, 12, 13, 14 and 15 of Section 1, Interstate Commerce Act.)

(10) The term "car service" in this act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this act.

(11) It shall be the duty of every carrier by railroad subject to this act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which

may be recovered in a civil action brought by the United States.

(13) The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this act relating thereto.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for non-observance of such rules, regulations, or practices.

(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (*a*) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the

Commission; (*b*) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (*c*) to require such joint or common use of terminals, including mainline track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after susequent hearing find to be just and reasonable; and (*d*) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

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IN THE

Supreme Court of the United States

MIDLAND VALLEY RAILROAD COMPANY,.....*Petitioner,*

v. No. .....

THOMAS BARKLEY ET AL,.....*Respondents.*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS.

Come now the respondents and say that the judgment of the Supreme Court of the State of Arkansas in this cause was rendered on the 14th day of February, 1927, and that petitioner's petition for rehearing in the Supreme Court of Arkansas was overruled by that court on March 14, 1927. 291 S. W. Rep. p. 431. The printed record in this case shows the above statements to be true.

On June 9, 1927, counsel for petitioner delivered to counsel for respondents two copies of petition in this court for certiorari and brief thereon and also two copies of the praecipe for printing of certain portions of the record in the case.

On July 19, 1927, counsel for petitioner delivered to counsel for respondents a copy of the printed record in this court. The copy of the printed record of the case in this court does not disclose whether the printed record of the case had at that time been filed in this court or not. The records of this court will show when this printed record was filed and will show also that a copy of this printed

record was delivered to counsel for respondents on July 19, 1927.

Section 8 of the Act of Congress of February 13, 1925, provides:

"That no writ of error, appeal, or writ of certiorari intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months: *Provided*, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court."

Section 1 of Rule 35 of the Rules of this court provides that a petition for review on writ of certiorari of a decision of a state court of last resort, a circuit court of appeals or the court of appeals of the District of Columbia, shall be accompanied by a transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed.

Section 2 of the same rule provides that the petition for certiorari shall contain only a summary and short statement of the matter involved and the reasons relied on for the allowance of the writ; that a supporting brief may be included in the petition; that a failure to comply with these requirements will be a sufficient reason for denying the petition; that forty printed copies of the petition and supporting brief shall be filed.

The concluding portion of Section 2 of said rule of this court is as follows:

"The petition will be deemed in time when it, the printed record, and the supporting brief, are filed with the Clerk within the period prescribed by section 8 of the Act of February 13, 1925."

Section 3 of the same rule provides:

"Notice of the filing of the petition, together with a copy of the petition, printed record, and supporting brief, shall be served by the petitioner on counsel for the respond-

ent within ten days after the filing, and due proof of service shall be filed with the clerk."

Respondents say that the petition for writ of certiorari in this case should be denied for the reasons that the petitioner in this case has not complied with the rules of this court and the Act of Congress with reference thereto within the time and in the manner required by said act and said rule.

II. Respondents deny that the question presented by the petition in this case is as to whether or not the Congress has so legislated with reference to the distribution of the available coal car supply by the railroads of the United States that the common-law and state statutes on the subject are superseded.

Respondents deny that if the decision of the Supreme Court of Arkansas in affirming the judgment rendered against the petitioner in this case is permitted to stand, it will materially affect the distribution of the coal car supply by the railroads of the country, or that it will render nugatory the orders of the Interstate Commerce Commission pertaining thereto.

Respondents deny that this court will take judicial notice that the Interstate Commerce Commission has assumed full jurisdiction under the Act of Congress referred to and has adopted rules and regulations governing the distribution of coal cars by all railroads in the United States, at least so far as the facts of the pending controversy are concerned.

The respondents deny that the Supreme Court of Arkansas has in its opinion decided a federal question of substance and great importance, and not heretofore directly determined by this court and deny that it is very important that the Act of Congress shall be construed by this court in this case.

The respondents deny that the principle involved is one of serious importance to all railroads and to operators of coal mines in the United States, and deny that it should be determined by the court in this case as to whether or not the statutes of the various states have been superseded by the Act of Congress.

Respondents say that there is no question involved in this case as to whether or not the statute of the State of Arkansas or of the various states of the union have been

superseded by the acts of Congress, and respondents further say that the complaint of the plaintiffs herein, the record of the trial below and the opinion of the Supreme Court of the State of Arkansas in this case, all of which appear in the printed record, filed in this court, show that no such question is involved in this case.

For these reasons, respondents say that the petition for writ of certiorari herein ought to be denied.

U. C. MAY,

CHAS. I. EVANS,

JEPTHA H. EVANS,

Counsel for Respondents.

BRIEF IN SUPPORT OF THE RESPONSE.

No right of the petitioner under the Act of Congress approved February 28, 1920, plead by the petitioner, was denied to the petitioner in this case either by the trial court or by the Supreme Court of the State of Arkansas.

Sections 895 and 915 of Crawford & Moses' Digest of the statutes of the State of Arkansas were not involved in the trial of this cause in the trial court nor were they involved in the questions determined by the Supreme Court of Arkansas in this case.

The Supreme Court of Arkansas did not hold that the respondents were entitled to anything under said sections of the Arkansas statutes and did not hold against any act of Congress in favor of the statutes of Arkansas.

The complaint of the respondents filed in the Circuit Court of the State of Arkansas is found at pages 1-4 of the printed record.

A paragraph of the complaint is as follows:

"Plaintiffs performed a great amount of development work in said mine at heavy expense to themselves and purchased and placed therein a large quantity of machinery and equipment in order to put said mine in condition for profitable operation during the term of their lease.

In the latter part of June, 1922, at a time when plaintiffs had developed said mine to the point that it could be profitably worked during the remainder of the term of plaintiff's lease, the defendant through its agent one Tyler demanded of plaintiffs that plaintiffs sell and turn over to defendant the output of coal from their said mine at the price of $3.55 per ton when coal was bringing on the open market much more than that price, and defendant, through its said agent, Tyler, threatened plaintiffs that if plaintiffs failed to sell and deliver to the defendant the coal from their said mine at said price the defendant would fail and refuse to furnish plaintiffs with coal cars in which to ship the output of their coal mine and that thereby plaintiffs' coal mine would be compelled to shut down. Plaintiffs refused to sell and deliver to the defendant their coal at the price as demanded and thereafter the defendant wrongfully failed and refused to furnish plaintiffs coal cars in

which to ship the coal from their said mine, although the plaintiffs duly requested the defendant so to do." P. R. 2.

It is thus seen that the gravamen of the respondents' claim against the petitioner in the court of the first instance had nothing whatever to do with any administrative question. The question involved in the case was purely judicial question, question entirely within the jurisdiction of the State trial court.

If the question involved in the case had been an administrative question, this would have been beyond the jurisdiction of the court but such is not the case.

If the question involved had been one with reference to the distribution of coal cars on the Midland Valley Railroad and the Interstate Commerce Commission had made an order with reference thereto and this order had been attacked by the respondents in their suit the court would have had no juridiction.

The petitioner put in evidence a great number of orders of the Interstate Commerce Commission and these are found in the printed record pages 233-288. None of these orders have any application to the Midland Valley Railroad Company and none of them cover any operations of the Midland Valley Railroad Company during the time in question, or profess to do so.

Respondents in their brief in the Supreme Court of Arkansas set forth a letter from the Interstate Commerce Commission which said that the Interstate Commerce Commission had made no order with reference to the distribution of coal cars on the Midland Valley Railroad during the period in question. This was set forth under the contention of the petitioner in its brief in this case in the Supreme Court of Arkansas that the courts would take judicial notice of the orders, rules and regulations of the Interstate Commerce Commission.

If the contention of petitioner with reference to that matter in the Supreme Court of Arkansas is correct then this court will take judicial notice that no rule or regulation or order of the Interstate Commerce Commission was had or made or rendered with reference to the distribution of coal cars by the Midland Valley Railroad during the period in controversy in this case.

The record in this court in this case will show and does show that no order or rule or regulation of the Interstate

Commerce Commission with reference to the distribution of coal cars during the period in question is in any way involved. The record shows that no rule, order or direction of the Interstate Commerce Commission is attacked or called in question by the respondents; that the only question insisted upon by the respondents is a judicial question and one within the jurisdiction of the court of first instance.

The decision of the Supreme Court of Arkansas in this case is found in the printed record pages 347-361.

The first paragraph of the decision of the Supreme court of Arkansas, after stating the contentions of the parties, the proceedings in the court below, and the result of the trial, is as follows:

"Section 402 of what is designated as the Transportation Act of Congress February 28, 1920, amends Section One of the Interstate Commerce Act approved May 29, 1917, to read as follows:

'(10) The term 'car service' in this Act shall include the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act.

'(11) It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish observe, and enforce just and reasonable rules, regulations, and practices with respect to car service, and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.'

Paragraph (12) makes it the duty of carriers by railroads to make just and reasonable distribution of cars for transportation of coal among the coal mines served by them whether located upon their own lines or lines dependent upon them for car supply. When the car supply is not equal to the requirements of the mines, it is the duty of the carriers to maintain and supply just and reasonable rating of such mines and to count each and every car furnished to, or used by, any such mine, for transportation of coal against the mine, and a penalty is attached for failure to comply with this provision.

Under paragraph 13 the Interstate Commerce Commission is authorized to order any or all carriers by rail-

road subject to the act to file with the Commission from time to time their rules and regulations with respect to car service, which rules and regulations shall be incorporated in their schedules, showing rates, fares and charges for transportation, and making the carrier subject to all provisions of the act.

Under paragraph No. 14, the commission may, after hearing on a complaint, or upon its own initiative, establish reasonable rules, regulations and practices with respect to car service by railroads subject to the act, and prescribe a penalty for non-observance of these rules, etc.

Under paragraph 15 whenever the Commission is of the opinion that shortage of equipment, congestion of traffic, or other emergency, with or without complaint, or on its own initiative and with or without notice to the carrier and without hearing or filing of report, it is empowered (2) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon or in the event of their disagreement as the commission may, after subsequent hearing, find to be just and reasonable, etc. U. S. Statutes at Large Vol. 41, Chp. 91, pg. 476, Sec. 402.

By an act of Congress September 22, 1923, U. S. Statutes at Large Vol. 42, p. 1025, an act was again passed entitled 'An Act to declare a national emergency to exist in the production, transportation and distribution of coal and other fuel, granting additional powers to the Interstate Commerce Commission providing for the appointment of a Federal Fuel Distributor, providing for the declaration of car service priorities during the present emergency, etc.' Section 2 provides in part as follows: 'That the powers of the Interstate Commerce Commission under the act entitled 'An Act to regulate commerce' approved February 4, 1887, as amended, including the Transportation Act 1920, and especially under Sec. 402 of said Transportation Act, 1920, are, during the aforesaid emergency, enlarged to include the authority to issue in transportation of coal or other fuel orders for priorities in car serv-

ice, embargoes, and other suitable measures in favor of, or against any carrier, * * * and to take any other necessary and appropriate steps for the priority in transportation and for the equitable distribution of coal or other fuel so as best to meet the emergency and to promote the general welfare, and to prevent upon the part of any person, partnership, association, or corporation, the purchase or sale of coal or other fuel at prices unjustly or unreasonably high. This act shall not be construed as repealing any of the powers heretofore granted by law to the Interstate Commerce Commission, but shall be construed as conferring supplementary and additional powers to said commission, and as an amendment to section 1 of the Interstate Commerce Act and subject to the limitations and definitions of commerce controlled by said act and all powers given said Interstate Commerce Commission shall be applicable to the execution of this act.'

Learned counsel for the appellant contend that it was the purpose of Congress in the above enactments to vest the Interstate Commerce Commission with supreme power in the matter of distribution of coal cars regardless of whether the coal was to be shipped in intra or interstate commerce. Counsel for appellant say: "It is the contention of the defendant that all State statutes and common-law obligations are swept away, as far as the transportation of coal, or the furnishing of cars, in which to transport the same, by the provisions of the Transportation Act, and the later emergency act of September 22, 1922." We cannot agree with counsel in this contention.

Section 8 of the Interstate Commerce Act, Vol. 24, Statutes at Large, p. 379, Supp. to Revised Statutes of the United States, 529, provides as follows: "That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, etc."

Section 9 provides that "Any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission, as hereinafter provided for, or may bring suit

in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction."

Section 22 provides in part as follows: "And nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

These provisions of the Interstate Commerce Act approved February 4, 1887, were not repealed expressly or by implication by the provisions of the Transportation Act of Congress of February 8, 1920, and the Emergency Act of September 22, 1922, upon which counsel for appellant relies. On the contrary, the above provisions of sections 8, 9 and 22 of the Interstate Commerce Act were in full force and effect when appellees' cause of action is alleged to have accrued. Counsel for the appellees concede that the cars which it is alleged appellant failed to furnish were ordered for and to be used in interstate shipments. Such being the case, the provisions of section 22 of the Interstate Commerce Act, *supra,* confers jurisdiction upon the State court. The question, we believe, is thoroughly settled against the contention of counsel for the appellant by decisions of the Supreme Court of the United States.

In *Pennsylvania Railroad Co.* v. *Puritan Coal Mining Co.,* 237 U. S. 121, Mr. Justice Lamar, speaking for the court, said: "But sections 8 and 9 standing alone, might have been construed to give Federal courts exclusive jurisdiction of all suits for damages occasioned by the carrier violating any of the old duties which were preserved and the new obligations which were imposed by the Commerce Act. And, evidently for the purpose of preventing such a result, the proviso to section 22 declared that 'nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.' * * * But for this proviso to section 22 it might have been claimed that, Congress having entered the field, the whole subject of liability of carrier to shippers in interstate commerce had been withdrawn from the jurisdiction of the State courts, and this clause was added to indicate that the Commerce Act, in giving rights of action in Federal courts, was not intended to deprive the State courts of their general and concurrent jurisdiction.' It was further

declared in that case concerning sections 8, 9 and 22 of the Interstate Commerce Act construing the same as a whole, that 'it did not supersede the jurisdiction of State courts in any case new or old, where the decision did not involve the determination of matters calling for the exercise of the administrative power and discretion of the commission, or relate to a subject as to which the jurisdiction of the Federal courts had otherwise been made exclusive.'

And in the case of *Pennsylvania Railroad Company* v. *Sonman Shaft Coal Co.*, 242 U. S. 120, Mr. Justice Van Devanter, speaking for the court, among other things, said: "Thus we have held that a manifest purpose of the provision in section 22 is to make it plain that such 'appropriate common-law and statutory remedies' as can be enforced consistently with the scheme and purpose of the act are not abrogated or displaced." Then, after reviewing and reiterating the doctrine of the above case of *Railroad Co.* v. *Puritan Coal Company, supra,* and other cases, he further says: "Applying these rulings to the case in hand, we are of the opinion that a State court could entertain the action consistently with the Interstate Commerce Act. Not only does the provision in section 22 make strongly for this conclusion but a survey of the scheme of the act and of what it is intended to accomplish, discloses no real support for the opposing view."

In *Texas & Pacific Railway Company* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, at page 446, Chief Justice White, speaking for the court, concerning section 22 of the Interstate Commerce Act, *supra,* said: "This clause, however, cannot be construed as continuing in shippers a common-law right, a continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the act, and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the act should be regarded as cumulative when other appropriate common-law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the act."

* * * The appellant sets up in his answer and makes an exhibit thereto various orders and rules of the Interstate Commerce Commission and the rules adopted by the United States Railroad Administration, relating to the

supply and distribution of coal cars, which were in effect during the period covered by the appellees' action. We deem it wholly unnecessary to set out and comment upon these rules and the authority upon which the appellant relies to support its contention that the State court was without jurisdiction. We have examined all these rules and considered the authorities, and especially the decision of the Interstate Commerce Commission in the case of *Interstate Commerce Commission* v. *Victor American Fuel Co.* and *Salt Lake Railroad Co.* of July 20, 1926, and we are convinced that these authorities have no application. As we construe the complaint, no attack is made by the appellees upon the rules and orders of the Interstate Commerce Commission relating to the supply and distribution of cars by railroads for the shipment of coal. We cannot discover in the complaint any allegation to the effect that the rules and orders of the Interstate Commerce Commission are unreasonable or unfair, that these rules themselves result in unlawful or unreasonable practice or in unjust discrimination or undue prejudice to shippers. That would involve an administrative question over which the Interstate Commission alone would have jurisdiction.

As is said in *Pennsylvania Railroad Co.* v. *Puritan Coal Co.*, *supra*, at page 131: "In a suit where the rule of practice itself is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the judgment and discretion of the administrative power which has been vested by Congress in the Commission. It is for that body to say whether such a rule unjustly discriminates against one class of shippers in favor of another. Until that body has declared the practice to be discriminatory and unjust no court has jurisdiction of a suit against an Interstate carrier for damages occasioned by its enforcement. * * * But if the carrier's rule, fair on its face, has been unequally applied, and the suit is for damages occasioned by its violation or discriminatory enforcement, there is no administrative question involved, the court being called on to decide a mere question of fact as to whether the carrier has violated the rule to plaintiff's damage. Such suits, though against an Interstate carrier for damages arising in Interstate Commerce may be prosecuted either in the State or Federal courts."

The Interstate Commerce Law which we have quoted above, makes it the duty of carriers by railroads to make

just and reasonable distribution of cars for transportation of coal among the coal mines served by such carrier and when the supply of cars available for service does not equal the requirements of the mines, it is the duty of the carrier to maintain and apply just and reasonable ratings of such mines and count against such mines each and every car furnished for transportation of coal. It is the duty of the carrier under the Interstate Commerce Act to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service.

This is purely an action against the appellant company for its failure to furnish cars, which is its common law, and statutory duty, both Federal and State. But the allegations of this complaint show that this action is bottomed upon appellant's alleged failure to comply with its common-law or contractual, as well as statutory duty to furnish cars under sections 895 and 915, C. & M. Digest.

According to the above decisions of the United States Supreme Court and our own court, appellee had the right to maintain this action under section 22 of the Interstate Commerce Act. It follows that the court did not err in overruling the appellant's demurrer to the complaint. P. R. 350-357.

It is thus seen that the complaint in this case alleges a violation of the statutory and common-law duty of the respondents by the petitioner and that the right to maintain the action was sustained under section 22 of the Interstate Commerce Act.

It will also be seen that this case does not call for the decision of any question as between a State statute or a common-law liability and an act of Congress.

It was conceded in the Supreme Court of Arkansas by the respondents as shown by the opinion of that court that the right of the respondents to recover was to be determined by the Federal law. The Supreme Court of Arkansas affirmed the right of respondents to recover under the Federal law.

The right to recover under the Federal law by a suit in a State court had been declared over and over again in repeated decisions of the Supreme Court of the United States. These decisions of the Supreme Court of the

United States were followed by the Supreme Court of Arkansas in its decision in this case. There is no new question in this case to be determined by this court. The only question in this case, the question of the jurisdiction of the State court to try this suit for damages, has been repeatedly decided by this court. There being no new Federal question to be determined by this court in this case, the petition for writ of certiorari should be denied.

The printed record shows that on June 13, 1927, P. R. 362, an order was entered by an Associate Justice of this court allowing the petitioner herein thirty days from that date within which to apply for a writ of certiorari in this cause.

The judgment of the Supreme Court of Arkansas in this case was entered on February 14, 1927, as shown by the record. The petition for rehearing was overruled on March 14, 1927. The order extending time to make the application for writ of certiorari was on June 13, 1927 and extended it for thirty days. This time expired on July 13, 1927.

Copies of the petition and brief and printed record were delivered to counsel for respondents on July 19, 1927.

This court can determine from an inspection of the record in this case whether or not the application for the writ was perfected as required by law within the extended time. If the application was not perfected within this time the writ should be denied for this reason.

Whether the petition for the writ was perfected within the time required by law or not, we respectfully submit that the petition should be denied on the merits.

U. C. May,

Chas. I. Evans,

Jeptha H. Evans,

Attorneys for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 375.

MIDLAND VALLEY RAILROAD COMPANY,

Petitioner,

vs.

PHILIP BARKLEY ET AL., Respondents.

BRIEF OF RESPONDENTS ON THE MERITS.

P. C. LAT[illegible]
[illegible] EVANS,
JEPTHA H. EVANS,
Counsel for Respondents.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 375

MIDLAND VALLEY RAILROAD COMPANY,
PETITIONER,

vs.

THOMAS BARKLEY ET AL., RESPONDENTS.

BRIEF OF RESPONDENTS ON THE MERITS.

No right of the petitioner under the Act of Congress approved February 28, 1920, plead by the petitioner, was denied to the petitioner in this case either by the trial court or by the Supreme Court of the State of Arkansas.

Sections 895 and 915 of Crawford & Moses' Digest of the Statutes of the State of Arkansas were not involved in the trial of this cause in the trial court nor

were they involved in the questions determined by the Supreme Court of Arkansas in this case.

The Supreme Court of Arkansas did not hold that the respondents were entitled to anything under said sections of the Arkansas statutes and did not hold against any act of Congress in favor of the statutes of Arkansas.

The complaint of the respondents filed in the Circuit Court of the State of Arkansas is found at pages 1-4 of the printed record.

A paragraph of the complaint is as follows:

> "Plaintiffs performed a great amount of development work in said mine at heavy expense to themselves and purchased and placed therein a large quantity of machinery and equipment in order to put said mine in condition for profitable operation during the term of their lease.
>
> "In the latter part of June, 1922, at a time when plaintiffs had developed said mine to the point that it could be profitably worked during the remainder of the term of plaintiffs' lease, the defendant through its agent one Tyler demanded of plaintiffs that plaintiffs sell and turn over to defendant the output of coal from their said mine at the price of $3.55 per ton when coal was bringing on the open market much more than that price, and defendant, through its said agent, Tyler, threatened plaintiffs that if plaintiffs failed to sell and deliver to the defendant the coal from their said mine at said price the defendant would fail and refuse to furnish plaintiffs with coal cars in which to ship the output of their coal mine and that thereby plaintiffs' coal mine would be compelled to shut down.

> Plaintiffs refused to sell and deliver to the defendant their coal at the price as demanded and thereafter the defendant wrongfully failed and refused to furnish plaintiffs coal cars in which to ship the coal from their said mine, although the plaintiffs duly requested the defendant so to do." P. R. 2.

It is thus seen that the gravamen of the respondents' claim against the petitioner in the court of the first instance had nothing whatever to do with any administrative question. The question involved in the case was purely a judicial question, a question entirely within the jurisdiction of the State trial court.

If the question involved in the case had been an administrative question, this would have been beyond the jurisdiction of the court, but such is not the case.

If the question involved had been one with reference to the distribution of coal cars on the Midland Valley Railroad and the Interstate Commerce Commission had made an order with reference thereto and this order had been attacked by the respondents in their suit the court would have had no jurisdiction.

The petitioner put in evidence a great number of orders of the Interstate Commerce Commission, and these are found in the printed record, pages 233-288. None of these orders have any application to the Midland Valley Railroad Company and none of them cover any operations of the Midland Valley Railroad Company during the time in question, or profess to do so.

Respondents in their brief in the Supreme Court of Arkansas set forth a letter from the Interstate Commerce Commission which said that the Interstate Com-

a penalty is attached for failure to comply with this provision.

Under paragraph 13 the Interstate Commerce Commission is authorized to order any or all carriers by railroad subject to the act to file with the Commission from time to time their rules and regulations with respect to car service, which rules and regulations shall be incorporated in their schedules, showing rates, fares and charges for transportation, and making the carrier subject to all provisions of the act.

Under paragraph No. 14, the Commission may, after hearing on a complaint, or upon its own initiative, establish reasonable rules, regulations and practices with respect to car service by railroads subject to the act, and prescribe a penalty for nonobservance of these rules, etc.

Under paragraph 15, whenever the Commission is of the opinion that shortage of equipment, congestion of traffic, or other emergency, with or without complaint, or on its own initiative and with or without notice to the carrier and without hearing or filing of report, it is empowered (2) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (*b*) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the

people, upon such terms of compensation as between the carriers as they may agree upon, or in the event of their disagreement as the Commission may, after subsequent hearing, find to be just and reasonable, etc., U. S. Statutes at Large, Vol. 41, Chp. 91, pg. 476, Sec. 402.

By an act of Congress, September 22, 1922, U. S. Statutes at Large, Vol 42, p. 1025, an act was again passed entitled "An act to declare a national emergency to exist in the production, transportation and distribution of coal and other fuel, granting additional powers to the Interstate Commerce Commission providing for the appointment of a Federal Fuel Distributor, providing for the declaration of car service priorities during the present emergency, etc." Section 2, provides in part as follows:

> "That the powers of the Interstate Commerce Commission under the act entitled 'An Act to regulate commerce' approved February 4, 1887, as amended, including the Transportation Act, 1920, and especially under Sec. 402 of said Transportation Act, 1920, are, during the aforesaid emergency, enlarged to include the authority to issue in transportation of coal or other fuel orders for priorities in car service, embargoes, and other suitable measures in favor of, or against any carrier, * * * and to take any other necessary and appropriate steps for the priority in transportation and for the equitable distribution of coal or other fuel so as best to meet the emergency and to promote the general welfare, and to prevent upon the part of any person, partnership, association, or

> corporation, the purchase or sale of coal or other fuel at prices unjustly or unreasonably high. This act shall not be construed as repealing any of the powers heretofore granted by law to the Interstate Commerce Commission, but shall be construed as conferring supplementary and additional powers to said Commission, and as an amendment to Section 1 of the Interstate Commerce Act and subject to the limitations and definitions of commerce controlled by said act and all powers given said Interstate Commerce Commission, shall be applicable to the execution of this act."

Learned counsel for the appellant contend that it was the purpose of Congress in the above enactments to vest the Interstate Commerce Commission with supreme power in the matter of distribution of coal cars regardless of whether the coal was to be shipped in intra or interstate commerce. Counsel for appellant say:

> "It is the contention of the defendant that all State statutes and common-law obligations are swept away, as far as the transportation of coal, or the furnishing of cars, in which to transport the same, by the provisions of the Transportation Act, and the later Emergency Act of September 22, 1922."

We can not agree with counsel in this contention.

Section 8 of the Interstate Commerce Act, Vol. 24, Statutes at Large, p. 379, Supp. to Revised Statutes of the United States, 529, provides as follows:

> "That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, etc."

Section 9 provides that

> "Any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission, as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction."

Section 22, provides in part as follows:

> "And nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

These provisions of the Interstate Commerce Act approved February 4, 1887, were not repealed expressly or by implication by the provisions of the Transportation Act of Congress of February 8, 1920, and the Emergency Act of September 22, 1922, upon which counsel for appellant relies. On the contrary, the

above provisions of Sections 8, 9 and 22 of the Inter-State Commerce Act were in full force and effect when appellees' cause of action is alleged to have accrued. Counsel for the appellees concede that the cars which it is alleged appellant failed to furnish were ordered for and to be used in interstate shipments. Such being the case, the provisions of Section 22 of the Interstate Commerce Act, *supra,* confers jurisdiction upon the State court. The question, we believe, is thoroughly settled against the contention of counsel for the appellant by decisions of the Supreme Court of the United States.

In *Pennsylvania Railroad Co. v. Puritan Coal Mining Co.*, 237 U. S., 121, Mr. Justice Lamar, speaking for the court, said:

> "But Sections 8 and 9 standing alone, might have been construed to give Federal courts exclusive jurisdiction of all suits for damages occasioned by the carrier violating any of the old duties which were preserved and the new obligations which were imposed by the Commerce Act. And, evidently for the purpose of preventing such a result, the proviso to Section 22 declared that 'nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.' * * * But for this proviso to Section 22 it might have been claimed that, Congress having entered the field, the whole subject of liability of carrier to shippers in interstate commerce had been withdrawn from the jurisdiction of the State courts, and this clause was

> added to indicate that the Commerce Act, in giving rights of action in Federal courts, was not intended to deprive the State courts of their general and concurrent jurisdiction. It was further declared in that case concerning Sections 8, 9 and 22 of the Interstate Commerce Act construing the same as a whole, that 'it did not supersede the jurisdiction of State courts in any case new or old, where the decision did not involve the determination of matters calling for the exercise of the administrative power and discretion of the Commission, or relate to a subject as to which the jurisdiction of the Federal courts had otherwise been made exclusive.'"

And in the case of *Pennsylvania Railroad Company v. Sonman Shaft Coal Co.*, 242 U. S., 120, Mr. Justice Van Devanter, speaking for the court, among other things, said:

> "Thus we have held that a manifest purpose of the provision in Section 22 is to make it plain that such 'appropriate common-law and statutory remedies' as can be enforced consistently with the scheme and purpose of the act are not abrogated or displaced."

Then, after reviewing and reiterating the doctrine of the above case of *Railroad Co. v. Puritan Coal Company, supra,* and other cases, he further says:

> "Applying these rulings to the case in hand, we are of the opinion that a State court could entertain the action consistently with the Interstate Commerce Act. Not only does the pro-

vision in Section 22 make strongly for this conclusion, but a survey of the scheme of the act and of what it is intended to accomplish discloses no real support for the opposing view."

In *Texas & Pacific Railway Company v. Abilene Cotton Oil Co.*, 204 U. S., 426, at page 446, Chief Justice White, speaking for the court, concerning Section 22 of the Interstate Commerce Act, *supra*, said:

"This clause, however, cannot be construed as continuing in shippers a common-law right, a continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the act, and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the act should be regarded as cumulative when other appropriate common-law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the act."

"* * * The appellant sets up in his answer and makes an exhibit thereto various orders and rules of the Interstate Commerce Commission and the rules adopted by the United States Railroad Administration, relating to the supply and distribution of coal cars, which were in effect during the period covered by the appellees' action. We deem it wholly unnecessary to set out and comment upon these rules and the authority upon which the appellant relies to support its contention that the State court was without jurisdiction. We have examined all

these rules and considered the authorities, and especially the decision of the Interstate Commerce Commission in the case of *Interstate Commerce Commission v. Victor American Fuel Co.* and *Salt Lake Railroad Co.*, of July 20, 1926, and we are convinced that these authorities have no application. As we construe the complaint, no attack is made by the appellees upon the rules and orders of the Interstate Commerce Commission relating to the supply and distribution of cars by railroads for the shipment of coal. We cannot discover in the complaint any allegation to the effect that the rules and orders of the Interstate Commerce Commission are unreasonable or unfair, that these rules themselves result in unlawful or unreasonable practice or in unjust discrimination or undue prejudice to shippers. That would involve an administrative question over which the Interstate Commission alone would have jurisdiction."

As is said in *Pennsylvania Railroad Co. v. Puritan Coal Co., supra,* at page 131:

"In a suit where the rule of practice itself is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the judgment and discretion of the administrative power which has been vested by Congress in the Commission. It is for that body to say whether such a rule unjustly discriminates against one class of shippers in favor of another. Until that body has declared the practice to be discriminatory and unjust no court has jurisdiction of a suit against an Interstate carrier for damages occasioned by its enforcement. * * * But if the carrier's rule, fair on its face, has been un-

> equally applied, and the suit is for damages occasioned by its violation or discriminatory enforcement, there is no administrative question involved, the court being called on to decide a mere question of fact as to whether the carrier has violated the rule to plaintiff's damage. Such suits, though against an Interstate carrier for damages arising in Interstate Commerce may be prosecuted either in the State or Federal courts."

The Interstate Commerce Law which we have quoted above makes it the duty of carriers by railroads to make just and reasonable distribution of cars for transportation of coal among the coal mines served by such carrier, and when the supply of cars available for service does not equal the requirements of the mines, it is the duty of the carrier to maintain and apply just and reasonable ratings of such mines and count against such mines each and every car furnished for transportation of coal. It is the duty of the carrier under the Interstate Commerce Act to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service.

This is purely an action against the appellant company for its failure to furnish cars, which is its common law and statutory duty, both Federal and State. But the allegations of this complaint show that this action is bottomed upon appellant's alleged failure to comply with its common-law or contractual, as well as statutory duty to furnish cars under Sections 895 and 915, C. & M. Digest.

According to the above decisions of the United States Supreme Court and our own court, appellee had the right to maintain this action under Section 22 of the Interstate Commerce Act. It follows that the court did not err in overruling the appellant's demurrer to the complaint. P. R., 350-357.

It is thus seen that the complaint in this case alleges a violation of the statutory and common-law duty of the respondents by the petitioner and that the right to maintain the action was sustained under Section 22 of the Interstate Commerce Act.

It will also be seen that this case does not call for the decision of any question as between a State statute or a common-law liability and an act of Congress.

It was conceded in the Supreme Court of Arkansas by the respondents, as shown by the opinion of that court, that the right of the respondents to recover was to be determined by the Federal law. The Supreme Court of Arkansas affirmed the right of respondents to recover under the Federal law.

The right to recover under the Federal law by a suit in a State court had been declared over and over again in repeated decisions of the Supreme Court of the United States. These decisions of the Supreme Court of the United States were followed by the Supreme Court of Arkansas in its decision in this case. There is no new question in this case to be determined by this Court. The only question in this case, the question of the jurisdiction of the State court to try this suit for damages, has been repeatedly decided by this Court.

The brief of the petitioner on the merits has little

in it other than was contained in its brief on the petition for writ of certiorari. The same authorities for the most part are cited, quoted from and relied on.

There is the additional authority cited in the brief on the merits of L. & N. R. R. Co. *v.* Brashear *et al.*, decided by the Court of Appeals of Kentucky in December, 1926, and modified in February, 1927. It is found in 289 S. W., 1094.

That case does not furnish any support for the contention of petitioner herein. That was a case where a suit was brought under a State statute and not under the common law and the Act of Congress.

The third syllabus of the case is as follows:

> "Action against interstate carrier for damages for failure to furnish 100 per cent supply of coal cars, as required by Ky. St., Sec. 783, should have been dismissed for want of jurisdiction in circuit court, on showing that the cars demanded were instrumentalities of interstate commerce, and that defendant furnished more than plaintiffs' *pro rata* supply of cars under rules of Interstate Commerce Commission."

That was a suit based entirely upon a State statute and not upon the common-law liability or upon the Act of Congress.

An examination of that case will disclose that its holding is not contrary to the holding of the Supreme Court of Arkansas in the case now before the court.

There appears to be some effort by the petitioner in this case to show to the court that this is a suit based upon certain sections of the Arkansas statutes and not

upon the common-law liability of the carrier and the Federal statutes pertinent thereto.

The complaint is not based upon the statutes of Arkansas. The case was tried and decided in the trial court and in the Supreme Court of Arkansas under the common-law liability and the applicable provisions of the Federal statutes.

We have inserted in a former portion of this brief a quotation from the complaint which shows what the claim of the respondents was and is.

Instructions given by the trial court at the request of the respondents show what the claim of respondents was and is.

The instructions given by the trial court at the request of the respondents are found at pages 325-7 of the printed record.

Four of the instructions there set out are as follows:

> 1. "If the defendant failed, neglected or refused to furnish plaintiffs with coal cars in which to ship the output of their coal mine because the plaintiffs refused to sell the defendant coal from their mine at a price less than the market price of said coal, and plaintiffs were damaged by such refusal on the part of the defendant, your verdict should be for the plaintiffs."

Instruction 2 so given is as follows:

> "If the defendant wrongfully failed, neglected or refused to furnish plaintiffs, upon proper requests therefor by them, coal cars in which to ship the output of their coal mine, and plaintiffs were damaged by such refusal, your verdict should be for the plaintiffs."

Instruction 3 so given is as follows:

> "As a common carrier of coal in car lots the law and Interstate Commerce Commission required the defendant to provide itself with and to furnish upon proper requests therefor to shippers of coal in car lots on its line a sufficient number of suitable cars in which to ship the coal on its line in accordance with the Commission's rule of distribution which was ordinarily and usually offered for shipment, and also to anticipate and provide for all such increased shipments of coal on its line as by the exercise of ordinary care and prudence it could anticipate and provide for."

The fourth instruction so given is as follows:

> "If you find for the plaintiffs you will find in their favor such an amount as will fairly compensate them under the evidence for the damages, if any, which have proximately resulted to the plaintiffs from the failure to furnish cars as set forth in the complaint."

The second instruction requested by the petitioner and given by the trial court is as follows:

> "The court instructs you that the burden of proof in this case rests upon the plaintiffs to show that the orders of the Interstate Commerce Commission made under and pursuant to the Acts of Congress vesting jurisdiction in the Interstate Commerce Commission in the matter of the distribution of available coal car supply were violated by the defendant, and unless you find that such orders were so violated then, un-

der the law, it will be your duty to return a verdict for the defendant railroad company." P. R., 328.

Instruction 3 asked by the petitioner and modified and given by the court is as follows:

> "The court instructs you that under the Act of Congress approved February 28, 1920, commonly known as the Transportation Act, that the manner of the distribution of the available coal car supply was vested in the Interstate Commerce Commission, and the said Interstate Commerce Commission was given, under said Act of Congress, the power and authority to adopt rules and regulations with reference to the distribution of said coal car supply, and therefore the burden would be upon the plaintiffs to establish that the rules and regulations adopted by the Interstate Commerce Commission pursuant to said power and authority given by the Act of Congress were violated, and if the proof fails to show any violation of the said Act of Congress or of the rules and regulations of the Interstate Commerce Commission your verdict should be for the defendant railroad company." P. R., 331.

The only modification made by the court in this instruction as asked by the petitioner is that it changed the word "as" in the instruction as requested by respondent to "if" in the fifth line from the bottom, and added the words "railroad company" after the word "defendant" at the end of the instruction.

Instruction 13 was asked by the petitioner and after slight modification was given as follows:

> "The court instructs you that even if the law of the State of Arkansas was applicable that under Section 895 of the statutes of Arkansas it is provided that a shipper must make written application to the station agent of the railroad company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight and its final destination, and that the railroad company shall furnish same at the place of shipment within six days from seven o'clock a. m. the day following such application, and if it appears from the evidence that the plaintiffs failed to comply with this section of the statute of Arkansas with reference to making a demand for cars, if it was applicable, the plaintiffs could not recover and your verdict should be for the defendant." P. R., 334.

The proof in the record shows conclusively that no effort was made to comply with the statutes of the State of Arkansas applicable to demand for cars. The only demand for cars was a demand made in writing as provided for and required by a rule of the Interstate Commerce Commission. A great portion of the record is taken up with these matters, but nowhere in the record is there any proof that there was any effort to demand cars as required by Section 895 of the Arkansas statutes. The whole question of the demand for cars was under the rule of the Interstate Commerce Commission.

Section 895 of the statutes of Arkansas referred to by counsel does not require the furnishing of one hundred per cent of the cars demanded as provided for in

that section. The same rule of construction with reference to the furnishing of cars under the Arkansas statute is followed as is followed by this Court in the many cases that have been before it.

The carrier is required to furnish without discrimination cars to the respective shippers in due proportion to their needs and calls.

The case now before the court though is not one that arose under the Arkansas statute or under any construction of the Arkansas statutes.

Section 895 of the Arkansas statutes applies only to the case where a shipper makes a written application to the station agent of the railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of the company, stating in said application the character of the freight and its final destination, and said section requires when such application is made that the railroad company furnish the cars at the place of shipment within six days from 7 o'clock a. m. of the day following such application.

No demand for cars was made under this section and no attempt to follow it and no right was asserted or contended for under it.

Section 915 of the Arkansas statutes referred to is a section which requires the Arkansas Railroad Commission to formulate rules for the furnishing of cars by railroad companies to shippers.

So these sections of the Arkansas statute were not applicable and were not applied in the case now before the court. No recovery in this case could possibly have been had under the Arkansas statute and the Arkansas

statute requires the Arkansas Railroad Commission to formulate rules for the furnishing of cars by railroad companies to shippers after the same fashion that the Federal statute requires the Interstate Commerce Commission to formulate rules for the furnishing of cars to shippers.

It thus conclusively appears that the Arkansas Supreme Court did not ground its decision in this case upon any State statute and that its decision is based upon the complaint made, the verdict rendered and the provisions of the Federal law.

The paragraph of the complaint copied in this brief shows that the respondents grounded their right of action in this case on the arbitrary refusal of the petitioner to furnish respondents with coal cars in which to ship the output of their mine, which refusal of the petitioner to so furnish coal cars was made because the respondents would not sell to the petitioner the output of the mine at a fixed price as demanded by one Tyler, the agent of the petitioner.

The battle in the trial court was fought around this proposition and the claim of the petitioner that it had complied with the rules of the Interstate Commerce Commission in furnishing cars to respondent.

These questions of fact were settled by the verdict of the jury in favor of the respondents and against the petitioner.

No question of jurisdiction could arise on the complaint filed by respondents.

The Circuit Court for the Greenwood District of Sebastian County, Arkansas, had jurisdiction of the mat-

ters involved in this controversy, according to the decisions of the Supreme Court of the United States prior to the enactment of the Transportation Act of 1920 and the Emergency Act of 1922.

There is nothing in either of these acts which changes the Federal law on the question of jurisdiction.

Counsel for petitioner fails to cite any provision in either of these Acts of 1920 and 1922 which deprives the courts of jurisdiction to try this case. We feel certain that there is no provision in either of these acts which prevents the courts from exercising jurisdiction in this class of cases.

We respectfully submit that the circuit court had jurisdiction of this cause and that the Supreme Court of Arkansas was right in affirming the decision of the circuit court, and we respectfully submit that the decision of the Supreme Court of Arkansas in this case should be affirmed by this Court.

U. C. MAY,
CHAS. I. EVANS,
JEPTHA H. EVANS,
Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 375.—October Term, 1927.

Midland Valley Railroad Company, Petitioner, vs. Thomas Barkley et al. } On Certiorari to the Supreme Court of the State of Arkansas.

[April 9, 1928.]

Mr. Justice Brandeis delivered the opinion of the Court.

Barkley and Burnett operated a wagon coal mine in Arkansas located about a quarter of a mile from the line of the Midland Valley Railroad, a corporation of that State. They shipped their coal by that carrier, largely in interstate commerce. In the spring and summer of 1922 there was a widespread strike in bituminous coal mines throughout the United States. When mining was resumed in August, an acute car shortage developed. Coal is usually shipped in open top cars; and tipple mines, which are the largest producers of coal, can use only cars of that type. The supply of these being inadequate, the Midland, like other carriers, distributed the available open top cars among the tipple mines and its box cars among the wagon mines. Barkley and Burnett refused to accept box cars; and later brought, in an Arkansas court, this action against the Midland to recover damages for the alleged failure to furnish, during the period of the car shortage, an adequate supply of cars. By appropriate proceedings, the defendant objected to the maintenance of the action in the state court. It contended that the proper distribution of coal cars by interstate carriers in time of car shortage was an administrative question which Congress had committed to the Interstate Commerce Commission; and that the plaintiffs should have sought relief by application to that board. The trial court overruled the objection; the plaintiffs got a verdict; the judgment entered thereon was affirmed by the highest court of the State, — Ark. —; and this Court granted a writ of certiorari. 275 U. S. —. The only question for decision is whether the action lies.

The plaintiffs contend, and the state court held, that the action lay because it was brought to enforce the common law duty of the carrier to furnish cars, *Midland Valley R. R. Co.* v. *Hoffman Coal Co.*, 91 Ark. 180, 189,—a duty confirmed by the statutes of the State (Crawford & Moses Arkansas Digest, 1921, § 895), and recognized by the Interstate Commerce Act. They argue that the right to bring an action in the courts of a State for a breach of that duty has been specifically preserved to the shipper by § 22 of the Interstate Commerce Act which declares that "nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies"; that the plaintiffs made no attack, open or covert, upon any regulation or order of the Commission relating to the supply or distribution of cars, compare *Lamberi Coal Co.* v. *Baltimore & Ohio R. R. Co.*, 258 U. S. 377; that consequently no administrative question was involved, compare *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Loomis* v. *Lehigh Valley R. R. Co.*, 240 U. S. 43; *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285; and that the case is governed by *Pennsylvania R. R. Co.* v. *Puritan Coal Co.*, 237 U. S. 121, and *Pennsylvania R. R. Co.* v. *Sonman Shaft Coal Co.*, 242 U. S. 120, rather than by *Baltimore & Ohio R. R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481, and *Morrisdale Coal Co.* v. *Pennsylvania R. R. Co.*, 230 U. S. 304.

The assertion that no administrative question is here involved rests upon a misapprehension. It may be assumed that there was no order of the Commission which required the Midland to distribute all available open top cars among the tipple mines. But the reasonableness of the Midland's practice in doing so, and in allotting box cars to the wagon mines, was the substantial matter in controversy. The right of a shipper to cars is not an absolute right and the carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made and which it could not reasonably have been expected to meet in full. The law exacts only what is reasonable from such carriers. The reasonableness of the rule adopted by the carrier is a matter for the Commission. *Pennsylvania R. R. Co.* v. *Puritan Coal Co.*, 237 U. S. 121, 133, 134. In the case at bar, the right of the plaintiffs to recover depended upon whether the defendant's practice of distributing its open top cars to tipple

mines and its box cars to wagon mines was reasonable. The practice is one which was generally adopted in times of car shortage by rail carriers in the same territory; which had, under like circumstances, been prescribed by general orders of the Director General;[1] which had been to some extent prescribed by the Interstate Commerce Commission;[2] and the propriety of which in individual cases has been repeatedly the subject of consideration by the Commission on applications by shippers for relief.[3] It was clearly one of those questions which, as recognized in the *Puritan*

[1]By an order dated June 17, 1918, the Regional Directors were instructed that "open top cars suitable and available for loading at tipple mines should be first supplied to such mines and should not be supplied to wagon mines until the tipple mines have been supplied." This modified an earlier order of March 20, 1918, which had directed that open top cars should not be furnished to wagon mines for loading on public team tracks if box cars were available for such loading.

[2]By notice of March 2, 1920, the Commission recommended that the rules as to the distribution of coal cars embodied in Railroad Administration Car Service Section Circular OS-31, issued September 12, 1918, revised December 23, 1919, be continued in effect. See In re Rules Governing Ratings of Coal Mines, 95 I. C. C. 309, 320. This recommendation appears to have been generally accepted by the carriers. Compare Winding Gulf Colliery Co. v. Virginian Ry. Co., 102 I. C. C. 41. From time to time the Commission has issued emergency orders governing the distribution of coal cars, under the power conferred by paragraph 15 of § 402 of Transportation Act, 1920, c. 91, 41 Stat. 456, 476. Several of these orders recognize the necessity of a distinction, in time of shortage, between wagon and tipple mines. By Service Order No. 14, issued August 25, 1920, the Commission directed that on any day when a carrier was unable to supply all mines on its line with the required open top cars, such cars should not be furnished to wagon mines which were unable to load on private tracks and from a tipple or like arrangement, until all tipple mines had been supplied. This was rescinded by Service Order No. 17, effective September 19, 1920, which, however, prohibited a carrier from furnishing open top cars in time of shortage to mines which did not customarily load cars within 24 hours of the time of placement, a prohibition which would include most wagon load mines. This order was vacated March 6, 1921. A similar requirement was incorporated into Service Order No. 25 by Amendment No. 1, effective October 17, 1922. Service Order No. 25 applied only to common carriers "east of the Mississippi River, including the west bank crossings thereof"; it was vacated December 11, 1922.

[3]Thompson v. Pennsylvania R. R. Co., 10 I. C. C. 640; Swaney v. Baltimore & Ohio R. R. Co., 49 I. C. C. 345. Compare Glade Coal Co. v. Baltimore & Ohio R. R. Co., 10 I. C. C. 226; Northern Coal Co v. Mobile & Ohio R. R. Co., 55 I. C. C. 502; Griffith v. Jennings, 60 I. C. C. 232; Dickinson Fuel Co. v. Chesapeake & Ohio Ry. Co., 60 I. C. C. 315.

case, calls for "the exercise of the regulating function of the Commission." p. 133. Compare *Robinson* v. *Baltimore & Ohio R. R. Co.*, 222 U. S. 506.

In the case at bar, the adequacy of the carrier's supply of open cars in normal times was not seriously questioned; there was no suggestion that the plaintiffs' mine had been discriminated against; and the only substantial complaint was that the Midland's practice in allotting the open top cars to the tipple mines was illegal. Thus the facts are unlike those in which actions at law for failure to furnish cars have been entertained. In *Pennsylvania R. R. Co.* v. *Puritan Coal Co.*, 237 U. S. 121, and in *Illinois Central R. R. Co.* v. *Mulberry Hill Coal Co.*, 238 U. S. 275, the claim was that, under a rule confessedly valid, the carrier had discriminated against the plaintiff. In *Eastern Railway Co.* v. *Littlefield*, 237 U. S. 140, the claim was that the carrier, knowing of the car shortage, had not only failed to notify the shipper but had accepted the shipment. In *Pennsylvania R. R. Co.* v. *Sonman Shaft Coal Co.*, 242 U. S. 120, 125-127, the action was for failure to supply cars in confessedly normal times. Compare *Pennsylvania R. R. Co.* v. *Stineman Coal Co.*, 242 U. S. 298, 300-301. In none of those cases was the reasonableness of the carrier's practice in controversy.

We have no occasion to consider whether the then existing orders of the Commission required the Midland to adopt the practice followed. Nor need we determine, whether, by the amendments of the Interstate Commerce Act made in Transportation Act, 1920, c. 91, § 402, pars. 10-17, 41 Stat. 456, 476, and the Act of September 22, 1922, c. 413, 42 Stat. 1025, Congress evinced the intention to occupy the field of regulating the distribution of coal cars; and thereby abrogated the preexisting limited right to sue in a state court for failure to supply cars.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.